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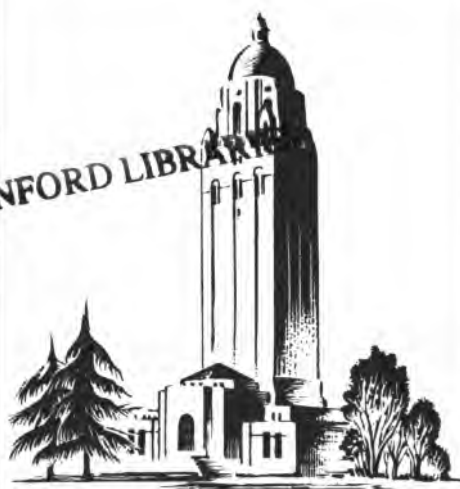
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A M A N U A L
FOR THE GUIDANCE OF
JUSTICES OF THE PEACE
AND
SPECIAL JUSTICES OF THE PEACE;
CONTAINING
THE STATUTE LAW OF THE COLONY BEARING
ON THEIR POWERS AND DUTIES,
AND AN
INTRODUCTORY CHAPTER ON PRELIMINARY
EXAMINATIONS.
ANNOTATED WITH
DECISIONS UNDER THE DIFFERENT SECTIONS,
AND AN APPENDIX GIVING
A NUMBER OF USEFUL FORMS,

BY
H. TENNANT,
Of the Inner Temple, Barrister-at-Law, Editor of "The Rules of Court,"
"Notary's Manual," "Masters and Servants Laws," &c., &c.

THIRD EDITION.
RE-ARRANGED AND GREATLY ENLARGED.

CAPE TOWN:
W. A. RICHARDS & SONS, GOVERNMENT PRINTERS.
1891.

PREFACE.

Since the publication of the second edition in 1880 so many changes have taken place in the Statute Law of the Colony affecting the jurisdiction of Justices of the Peace, and the powers given to Special Justices of the Peace have been so considerably extended, that a new edition was urgently needed. As the Colonial Secretary's Department have codified all rules and regulations for the guidance of Civil Commissioners and Resident Magistrates, this was deemed a fitting opportunity for the publication of a new edition of this Manual, which is recognized by Government in a footnote at page 48 of the Code above referred to, where those concerned are informed that "a revised edition of the Justice of the Peace Manual will shortly be issued and supplied to all Resident Magistrates."

Justices of the Peace and Special Justices of the Peace have been treated of separately, as their jurisdiction differs materially.

The arrangement of the book has been alphabetical throughout, so that those seeking for information should have no difficulty in speedily finding what they want.

It is hoped that, in giving an introductory chapter on *Preliminary Examination*, and the decisions of the Superior Courts on many important sections of the Statute Law affecting those for whom this book has been prepared, the usefulness of the Manual will be increased.

H. T.

Chambers, September, 1891.

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ADDENDA.

The following Acts were promulgated too late for them to appear in the body of the work :—

Cattle Removal.

No. 12, 1891.] ACT [August 11, 1891.
To Amend the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870."

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. The words "stock under saddle or pack saddle," in the proviso to section thirteen ⁽¹⁾ of the Act No. 14 of 1870, commonly called "The Cattle Removal Act, 1870," are hereby expunged. Section 13 of Act 14 of 1870 amended by striking out words "stock under saddle or pack saddle." Definition of "driving."

2. For the purpose of the "Cattle Removal Act, 1870," and of the "Cattle Removal Amendment Act, 1889," ⁽²⁾ any person who is riding or leading any stock, whether under saddle or pack-saddle, or not, shall be deemed to be driving and to be in custody and possession of such stock.

3. This Act may be cited for all purposes as "The Cattle Removal Amendment Act, 1891," and shall be read as one with "The Cattle Removal Act, 1870," and "The Cattle Removal Amendment Act, 1889," which with this Act may be cited collectively as "The Cattle Removal Acts, 1870 to 1891." Short title and effect of Act.

Cattle Thefts.

No. 33, 1891. ⁽³⁾] ACT [August 21, 1891.

To Provide for the Repression of Theft of Stock and Produce.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

1. For the purposes of this Act, the word "stock" shall include any horse, gelding, mare, colt, filly, mule, or ass; any bull, ox, cow, heifer, or calf; any sheep or goat, and any ostrich. Definition of terms.

The word "produce" shall include all skins, hides, mohair, wool and ostrich feathers.

"Sufficient fence" when applied to wire fences shall mean a fence of four wires and not less than four feet high; in other cases any fence, wall or hedge of the said height, through which no animal could pass without breaking.

* * * * *

7. Notwithstanding the provisions of section forty-two ⁽⁴⁾ of Ordinance No. 40 of 1828, it shall be lawful for any Justice of the Peace, Field-cornet, Assistant Field-cornet, or for any Police Officer of such rank as the Governor may from time to time designate, upon Persons authorized to search buildings, &c., for stolen stock or produce.

⁽¹⁾ *vide* p. 26 *infra*.

⁽²⁾ § 9, Act 14, 1870, p. 25; § 2, Act 20, 1889, p. 27; and § 5, Act 14, 1870, p. 194 *infra*.

⁽³⁾ *Vide* pp. 27-29.

⁽⁴⁾ *Vide* p. 13.

No. 18, 1891.

being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building, hut, kraal or enclosure to search or to grant written authority to any person applying for the same, to search such building, hut, kraal or enclosure at any time during the day or night: Provided that any landowner shall in respect of buildings or huts upon his own land be entitled to exercise all the powers conferred by this section upon the officers hereinbefore mentioned.

Penalty for malicious exercise of authority to search.

8. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, apply for, obtain, and act upon such written authority as aforesaid, or wrongfully and maliciously, or without probable cause exercise the powers of search conferred by the last preceding section, shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and shall also be liable to pay to the person in occupation of the building, hut, kraal or enclosure in question, when the same was searched, such sum not exceeding fifty pounds for damages as any competent Court may award.

Short title.

10. This Act may be cited as the "Stock and Produce Thefts Repression Act, 1891."

Oaths.

No. 18, 1891. (1)]

ACT

[August 18, 1891.

To Consolidate and Amend the Law relating to Oaths, Affidavits, Affirmations, and Solemn Declarations.

Preamble.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Repeal of laws.

1. The Ordinance No. 6, 1845, the seventh section of Ordinance No. 72 of 1830, the seventh section of Ordinance No. 14 of 1846, the tenth section of Act No. 4 of 1861, so much of the sixty-first section of the Constitution Ordinance and so much of any other law as shall be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

OF OATHS.

Extra-judicial oaths not to be administered by Magistrate, Justice of Peace, or other person authorised to administer oaths.

2. It shall not be lawful for any Magistrate, Justice of the Peace, or other person authorised to administer an oath to administer or cause or allow to be administered any oath, affidavit, or affirmation touching any matter or thing whereof such Magistrate, Justice of the Peace, or other person has not or does not, believe himself to have jurisdiction, cognizance, or authority under or by virtue of some law in force at the time being.

Justice of the Peace may within his jurisdiction administer oaths, or swear any deponent to the truth of an affidavit in the following cases.

3. Any Justice of the Peace may within the district in which jurisdiction is conferred on him, administer an oath or swear any deponent to the truth of an affidavit in any of the cases or proceedings following:—

- (1) In any action or proceeding pending or about to be brought in any Court of Law within this Colony or elsewhere.

(1) This Act takes the place of Ord. No. 6, 1845, p. 19, *infra*.

(2) In any proceeding before Arbitrators.

No. 18, 1891.

(3) In any proceeding in the nature of a judicial proceeding under the Insolvent Ordinance No. 6, 1843.

(4) For the proof of the due execution of any will, or other document, required by the law, usage, or practice of any other country to be proved or authenticated by affidavit.

(5) In any enquiry or proceeding in which by this Act or any other law the taking of an oath or affidavit is directed, authorized, or permitted.

OF THE OATH OF ALLEGIANCE.

4. From the oath prescribed by the sixty-first section of the Constitution Ordinance to be taken by Members of the Legislative Council and House of Assembly respectively there shall be omitted all the words commencing "and that I will defend her" to the end of the form of oath.

Omission of certain words in the oath prescribed to be taken by members of Parliament.

5. Wherever by any law or usage it shall be required of any person to take the Oath of Allegiance such Oath shall be taken as nearly as is material in the form following:—I do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law."

Form of oath of allegiance.

OF AFFIRMATIONS IN LIEU OF OATHS.

6. In all cases where any person who is or may be required to take an oath, shall object to do so, it shall be lawful for such person to make an affirmation in the words following:—"I do truly affirm and declare that" (*here insert the matter to be affirmed or declared*), which affirmation or declaration shall be of the same force and effect as if such person had taken such oath. And every person authorised, required, or qualified by law to take or administer an oath shall accept in lieu thereof an affirmation or declaration as aforesaid.

Affirmation substituted for oath, in case any person objects to taking oath. Effect of affirmation.

7. The same penalties, punishment, and disability which are respectively in force, and are attached to any neglect, refusal, and false or corrupt taking or subscribing of any such oath as aforesaid shall apply and attach in like manner in respect of the neglect, refusal, and false or corrupt making or subscribing respectively of any such affirmation or declaration as is in the last preceding section mentioned.

Penalties for refusal, &c., to take oath or for taking false oath to apply to refusal, &c., to make affirmation or for false affirmation.

OF SOLEMN DECLARATIONS.

8. The third section of "The Interpretation Act, 1883," is hereby amended by the omission of the words, "Ordinance No. 6, 1845," and the definition therein of "Solemn Declaration" shall read "Solemn Declaration,—A declaration made under and by virtue of the provisions of the Oaths and Declarations Act, 1891."

Amendment in Interpretation Act, 1883, substituting Oaths and Declarations Act, 1891, for "Ordinance No. 6 of 1845," in definition of "Solemn Declaration." Form of declaration.

9. Whenever by any law now in force a solemn declaration is directed, permitted, or authorised to be made it shall be sufficient, in case such declaration be made and subscribed in the form (as nearly as material) to this Act annexed.

10. Any Justice of the Peace may take and receive the declaration of any person voluntarily making the same before him in the form mentioned in the last preceding section, and if any declaration so made shall be false or untrue in any material particular, the person wilfully making such false or untrue declaration shall be guilty of the

Penalty for making false declaration before Justice of the Peace.

No. 18, 1891.

offence of making a false declaration, and shall upon conviction be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding six months, but nothing herein contained shall prevent the prosecution of such person for fraud or any other crime or offence of which he may be chargeable, provided that he shall not be liable to prosecution for making a false declaration, and also for fraud or such other crime or offence.

Act not to
apply to de-
clarations
under Transfer
Duty Act, 1884.
Short title of
Act.

11. Nothing in this Act contained shall extend or apply to any declaration referred to in, or made under the provisions of, the "Transfer Duty Act, 1884."

12. This Act may be cited as "The Oaths and Declarations Act, 1891."

Schedule.

SCHEDULE.

Solemn Declaration.

I, A.B., of _____, do solemnly and sincerely declare (*here insert the matter to be declared*). And I make this solemn declaration, conscientiously believing the same to be true.

Declared at _____, this _____ day of _____, 18 ____.

Before me,

LIST OF ABBREVIATIONS.

A.—Appeal Court Reports.

A. C.— Do.

Buch.—Buchanan's Supreme Court Reports.

E. D. C.—Eastern Districts Court Reports.

Foord.—Foord's Supreme Court Reports.

G.—Griqualand High Court Reports.

High Court.— Do.

J.—Juta's Supreme Court Reports.

Juta.— Do.

Menzies.—Menzies' Supreme Court Reports

Roscoe.—Roscoe's Do.

Searle.—Searle's Do.

PRELIMINARY EXAMINATIONS.⁽¹⁾

With respect to preliminary or preparatory examinations, Justices of the Peace have very much the same powers as Resident Magistrates; but for obvious reasons these powers are not generally exercised.

The appearance of the accused may be compelled either by warrant of apprehension issued on a sworn information, or by summons.

Each witness having been sworn to tell the truth shall be examined in the presence of the prisoner.

If any deposition has been taken in the absence of the accused it shall be read over to him in the presence of the witness making it, whom he shall be entitled to cross-examine.

The accused or his legal adviser shall be allowed to cross-examine all witnesses; if he have no questions to put to any witness it should be so recorded.

All depositions should be signed by the witnesses and by the Magistrate or Justice of the Peace before whom they were made. If any witness be unable, or refuse to sign his deposition, it should be signed by two persons in whose presence it was taken (*Ordinance* 40, 1828, § 31).

The fact that the depositions were made in the presence and hearing of the accused, and that he was in his sound and sober senses, should be carefully set out on the face of the proceedings. His cross-examination, or if he have no questions, a note of that fact should be recorded with equal care. Upon the observance of these provisions depends the right of the Crown in the event of the death or illness of any of the witnesses to make use of their depositions as evidence at the trial of the case (*Ordinance* 40, 1828, § 33; *Ordinance* 72, 1830, § 41; *Act* 17, 1874, § 5).

As a rule hearsay evidence is not admissible; but in cases in which the death of any person is the subject of the enquiry, the dying declarations of the deceased are receivable in evidence if it appear that he was conscious that he was in a dying state at the time he made them, and had not the faintest hope of recovery. These declarations should, if possible, be reduced to writing and witnessed.

In every serious case of assault it is advisable to watch carefully the condition of the person assaulted. If any dangerous symptoms manifest themselves before he is well enough to give evidence in presence of the accused, the latter should be taken to his bedside in order that a deposition may be taken there if possible, and that the accused may have an opportunity of cross-examining. If it is not possible to take a deposition, an attempt should be made to obtain some statement under conditions which would render it admissible as a dying declaration.

By Section 3 of Act 4 of 1861, a husband could not give evidence for or against his wife, nor the wife for or against her husband. This prohibition did not apply to cases in which either of them shall be prosecuted for any offence against the person of the other (*Ordinance* 72, 1833, § 15).

(1) See Appendix for the various forms required.

By Section 6, however, of Act No. 13 of 1886, an accused person and the husband or wife of such person may give evidence. Such witness cannot refuse to answer any question on the ground that it may criminate himself (§ 7 *ibid*).

Witnesses who, from ignorance arising from youth or defective education, do not understand the nature of an oath, may be examined without being sworn: provided that they be admonished to speak the truth, the whole truth, and nothing but the truth, and that some becoming form be administered to them as may appear to impress their consciences (*Act 4, 1861, § 12.*) Any proceeding of this nature should be carefully and fully recorded.

If any person having been duly summoned to give evidence neglect to attend, a warrant may be issued to apprehend and bring him for examination.

If any witness obstinately refuse to give evidence, he may be committed to and kept in prison until he comply (*Ordinance 40, 1828, § 31*). A witness may be bound by a recognizance to appear, after being duly summoned to give evidence at the trial, and upon his refusing he may be committed to and detained in prison until he comply (*Ordinance 40, 1828, § 31*).

After the examination of the witnesses in support of the charge, the accused shall be asked what he will say in answer thereto, and shall be cautioned that he is not bound to make any statement, and that what he says may be used in evidence against him. The statement shall be taken down in writing, and be signed by the accused, the Magistrate or Justice of the Peace, and also by one person at least who may be present (*Ordinance 40, 1828, § 34*).

If the provisions with respect to the recording and attestation of the statement of the accused be properly complied with it may be used in evidence against him at the trial on its mere production (*Act 17, 1874, § 4*).

If a prisoner at a preparatory examination, having been called upon to do so, admits that he has been previously convicted, his admission shall be reduced to writing and subscribed by him and the presiding magistrate, and shall be received in evidence (§ 8, *Act 13, 1886*).

When the examination has been closed and the statement of the accused taken, the Magistrate or Justice of the Peace may, if he think fit, commit him for trial and grant a warrant for his committal to the gaol of the district till brought to trial (*Ordinance 40, 1828, § 35*).

When sufficient grounds do not appear either for committing the accused for trial or for discharging him, and it shall appear that further evidence may be produced, a warrant for further examination may be granted. Such re-committal may upon sufficient cause—to be stated in the warrant—take place more than once.

Until a prisoner is committed for trial he is not of right entitled to bail (*Ordinance 40, 1828, § 37*). But it is advisable, except in serious cases, to accept bail at any stage of a case. None but persons of means should be accepted as bail.

In capital offences a Magistrate or Justice of the Peace cannot admit to bail (*Ordinance 40, 1828, §§ 46, 51*).

All articles or writings produced at a preliminary examination should be carefully inventoried, labelled, and numbered with a number

PRELIMINARY EXAMINATIONS.

3

corresponding with a number appearing in the depositions, and should be kept in safe custody for the purposes of the trial (*Ordinance 40, 1828, § 41*).

All original depositions should be forwarded to the Resident Magistrate of the district for record and transmission to the Attorney-General or Solicitor-General as the case may be.

JUSTICES OF THE PEACE.

JURISDICTION:

1. GENERAL.
2. SPECIAL.

1. GENERAL JURISDICTION.

No. 32, 1827.]

[Dec. 11, 1827.

For creating Justices of the Peace in this Colony⁽¹⁾.

Preamble.

The Governor
may appoint
Justices of the
Peace.

Oath of office
and of allegiance
to be taken by
Justices.

Power and
duties of
Justices.

Inquiry into
offences.

WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the laws, that Magistrates be appointed in the several districts of this Colony, with power to apprehend, commit to prison, or hold to bail, all vagrants, rioters, robbers, or other notorious offenders found within their several jurisdictions, in order that such offenders may be brought to trial, and with power to do all other such matters and things as the said Magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this Ordinance it shall and may be lawful for the Governor or Lieutenant-Governor for the time being, from time to time, as occasion may require, to appoint Justices of the Peace under the great seal of the Colony of the Cape of Good Hope, for Cape Town and the district thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the Chief Justice, or any Judge of the Supreme or Circuit Courts, or before the Civil Commissioner or any Magistrate of the district for which such Justice is assigned to act (who are hereby empowered and required to administer the same), and the clerks of the peace respectively shall enter in the records of their respective districts that the said oaths were duly administered and taken.

2. And be it further enacted, that from and after the passing of this Ordinance, the persons who shall be so appointed as aforesaid to act as Justices of the Peace, shall have power, and are hereby required, to preserve the public peace, and for that purpose, to call to their aid and assistance all field-cornets, constables, and peace officers, military officers, and others His Majesty's subjects, to quell all riots, brawls, or other disturbance, and to lodge all rioters, brawlers, vagrants, and disturbers of the peace in any prison within their respective jurisdiction, to be dealt with according to law; and they are hereby authorized and required to inquire of all crimes and offences committed, or alleged to be committed, within their respective jurisdictions,

⁽¹⁾ Any J.P. becoming insolvent forfeits his commission, § 12, Act 38 of 1884, *infra*.

and for that purpose to summon⁽¹⁾ and examine upon oath all witnesses touching such crimes and offences, and to apprehend and cause to be apprehended, all criminals and offenders, and to deal with them according to law: And the said Justices of the Peace are hereby authorized and required, upon information or complaint in writing upon oath made to them, or any of them, to cause to come before them all those who have used any threats towards any person or persons, whether regarding their bodies or the firing of their houses, and to require of them sufficient security for the peace, or their good behaviour towards His Majesty or his subjects; and if they shall not give such security, then to cause them to be safely kept in prison till they shall find such security.⁽¹⁾

No. 32, 1837.

Power to require security for the peace and for good behaviour.

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them in writing upon oath, as aforesaid, and all recognizances or other securities for keeping the peace or for good behaviour taken by them, to be sent to the clerk of the peace⁽²⁾, acting for the district or place for which the said Justices are assigned respectively, within twenty-one days after such information or complaint made or security taken; and for every such information or complaint made as aforesaid and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

Informations on oath and recognizances, &c., to be transmitted by Justices to the clerk of the peace within twenty-one days.

Penalty on failure, £20.

4. And be it further enacted, that all gaolers and keepers of prisons shall receive into their custody, and safely keep, every person committed to their charge by warrant under the hand and seal of any Justice of the Peace, until they be discharged by due course of law.

Gaolers to receive into custody persons committed by warrant of Justices.

5. And be it further enacted, that no process shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any Justice of the Peace, for anything by him done in the execution of his office, until notice in writing of such intended process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party who intends to sue or cause the same to be sued out, or served, at least one calendar month⁽³⁾ before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party has, or claims to have, against such Justice of the Peace, on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode.

Notice of action against Justices for acts done in execution of their office to be given at least one month before process is sued out.

6. And be it further enacted, that no person shall recover any judgment against any Justice of the Peace, in any case where the action shall be grounded upon any act of the defendant as Justice of the Peace, unless it is proved upon the trial of such action that such notice was given as aforesaid⁽³⁾; but in default thereof such Justice shall be entitled to a judgment, and his full costs.

On failure of such notice, judgment to be given in favour of Justice.

7. And be it further enacted, that it shall and may be lawful for such Justice of the Peace within one calendar month after such notice given as aforesaid to tender amends to the party complaining, or to the attorney or agent of such party; and in case the same is not

Tender of amends by Justice and further proceedings in action.

⁽¹⁾ Benck v. Oosthuizen, 1 Juta, 99.

⁽²⁾ Clerks of the Peace no longer exist, and these documents are now sent to the Resident Magistrate.

⁽³⁾ Stadler v. Marsh., 3 Menz. 467; De Beer v. Tinley, 2 R 35.

No. 32, 1837.

accepted, to plead such tender to any action to be brought against him grounded on such process, together with the plea of "not guilty," and any other plea with the leave of the Court; and if the Court before which such action is brought shall find the amends so tendered to have been sufficient, then such Court shall give judgment for the defendant, and in such case, or in case the plaintiff shall not proceed in his action, or in case judgment shall be given for the defendant on any proceeding in the nature of a demurrer, such Justice shall be entitled to like costs as he would have been entitled to, in case he had pleaded not guilty, only; and if the Court shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then the said Court shall give judgment for the plaintiff, and such damages as the said Court shall think proper, together with the costs of suit.

Payment into Court, in case of no tender or insufficient tender of amends.

8. And be it further enacted, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall depend, at any time before the hearing of the said cause, to pay into Court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court.

Evidence for plaintiff restricted to the cause of action contained in the notice.

9. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

No action to be brought against constables, &c., for act in obedience to warrant, until after demand and refusal of warrant.

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at any usual place of his abode by the party or parties intending to bring such action, or by his, or their, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the Court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices, and if such action be brought jointly against such Justice or Justices, and also against such constable, or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the Court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the Justice or Justices, that in such case, the plaintiff or plaintiff shall recover his or their costs against him or them, to be taxed in such manner by the proper officer, as to include such

If demand of perusal and copy of warrant have been duly complied with, then on production of warrant at the trial, judgment to be given for the defendant,

notwithstanding defect of jurisdiction in the Justice.

costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

Costs, how to be taxed.

11. And be it further enacted, that where the plaintiff, in any such action against any Justice of the Peace, shall obtain a judgment, in case the Judge before whom the cause shall be tried, shall, in open Court, certify, on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

If the Judge certify on the record that the Justices have wilfully and maliciously committed the injury, which is the cause of action, double costs to be allowed.

12. And be it further enacted, that no action shall be brought against any Justice of the Peace for anything done in the execution of his office, or against any constable or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

Actions to be brought within six months after commission of the act complained of.

SCHEDULE.

Form of the Oath of Allegiance.

I, —, do sincerely promise and swear, that I will be faithful, and bear true allegiance to His Majesty King George. So help me God!

Oath of allegiance.

Form of the Oath of Office to be taken and subscribed by Justices of the Peace.

I, A. B., do swear that, as Justice of the Peace in the — of —, in all articles in the Governor or Lieutenant-Governor's commission to me directed, I will do equal right to the rich and to the poor, to the best of my ability and power, and according to the laws and customs of the Colony, and Ordinances and Proclamations thereof: And I will not be of counsel of any quarrel depending before me: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures that shall fall before me, I will cause to be entered without any concealment or embezzling, and will truly send them to the Colonial Treasury, or otherwise dispose of them according to law: I will not obstruct the cause of justice for gift or other cause, but well and truly will discharge my duty as Justice of the Peace, without partiality, favour, or affection. So help me God!

Oath of office.

Actions against Justices of the Peace.

Convicted Felons Act.

No. 1, 1860.]

[May 21, 1860.

* * * * *

10. If any suit or action be brought against any Resident Magistrate, Justice of the Peace⁽¹⁾, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

General issue may be pleaded in all actions.

(1) See also §§ 5—12, Ord. 32, 1827, *Supra*.

Insolvency of Justices of the Peace.
Insolvent Law Amendment Act.

No. 38, 1884.]

[July 25, 1884.]

Justice of the
Peace becoming
insolvent to lose
his commission.

12. If the estate of any person holding a commission as a Justice of the Peace shall be surrendered or sequestered as insolvent, such commission shall upon such surrender or sequestration be considered as annulled and cancelled.

Corrupt Practices at Elections.

No. 9, 1883.]

[September 12, 1883.]

Penalties in-
curred by candi-
dates cognizant
of corruption.

38. Where it is found by the court upon an election petition under this Act, that corrupt practices have been committed by or with the knowledge and consent of any candidate, the election of such candidate—if he has been elected—shall be void, and a fresh election shall thereupon be held, and such candidate shall be incapable of being elected to or of sitting in either House of Parliament during the five years next after the date of his so being found guilty; and he shall further be incapable during the said period of five years

- (1) Of being registered as a voter and voting at any election for members of parliament in this colony; and
- (2) Of holding any divisional council or municipal office; and
- (3) Of holding any judicial office and of being appointed and of acting as a justice of the peace.

Penalties for
persons other
than candidates
guilty of cor-
ruption.

39. Any person other than a candidate found guilty of corrupt practices at an election by any competent court shall during the five years next after the time at which he is so found guilty, be incapable of being elected to and sitting in Parliament, and also during the said period of five years

- (1) Of being registered as a voter and of voting at any election for members of Parliament in this Colony; and
- (2) Of holding any divisional council or municipal office; and
- (3) Of holding any judicial office and of being appointed and of acting as a justice of the peace.

Penalties for
perjury under
this Act.

40. If at any time after any person has become disqualified as aforesaid by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to which the petition was presented, to order, and the said court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Power of
appeal.

41. Any person found guilty of corrupt practices as aforesaid, or any candidate whose election has been declared void as aforesaid by any circuit court, may appeal from the decision of such circuit court to the court of appeal of the Cape of Good Hope, and such court of appeal shall affirm, reverse, or alter the decision of such circuit court as justice may require, provided such appeal shall be noted, and prosecuted within the time and according to the manner of proceeding in appeals from circuit courts.

* * * * *

Commissioners of the Court.

No. 7, 1857.

Rule of Court, No. 193.

It is ordered, that all Justices of the Peace and any persons hereafter duly appointed to act as Justices of the Peace, within the Colony, be appointed and empowered to act as Commissioners of this Court, for the purpose of taking affidavits ^{To take affidavits.} (¹) therein.

Witnesses' Expenses (Criminal Cases).

No. 7—1857.]

AN ACT

[June 29, 1857.]

For regulating the payment of the expenses of Field-Cornets and other Public Officers attending to give evidence in certain criminal cases.

Whereas Field-Cornets and other public officers are occasionally summoned to attend as witnesses in criminal cases for the purpose of giving evidence regarding matters with which they have been concerned solely in their official capacity: And whereas doubts exist whether, when so attending, they can lawfully be allowed any expenses other than the ordinary expenses provided by Ordinance No. 59, entitled "Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations:" And whereas it is proper to remove such doubts and to provide that such witnesses shall be considered when so attending to give evidence as officially engaged in the public service, and be paid accordingly: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:—

Preamble.

1. As often as any field-cornet, field-commandant, assistant field-cornet, or Justice of the Peace shall attend as a witness before any Court or Justice of the Peace in this Colony, under such circumstances that he would if an ordinary witness be entitled to be allowed expenses under the Ordinance aforesaid, No. 59, at and after the rate therein provided, he shall, in case he shall have been summoned to give evidence regarding matters with which he has been concerned solely in his official capacity, receive and be allowed expenses at and after the rate of remuneration for field-cornets when from home on service, set forth in Ordinance No. 9, 1848, entitled "Ordinance for regulating the Duties and Remuneration of Field-cornets;" that is to say, he shall receive as and for his expenses an allowance for horse-hire at the rate of one shilling and sixpence per hour ⁽²⁾ together with a further allowance at the rate of seven shillings and sixpence per day.

Field-cornet, field-commandant, or Justice of the Peace, summoned to give evidence in regard to matters with which they have been officially concerned to be remunerated under Ordinance No. 9, 1848.

(¹) *Re Campbell.* Buchanan's Reports, 1874, p. 2.

(²) An hour is allowed for every six miles travelled. Both horse-hire and personal allowance are paid for the time of necessary detention, the allowance for horse-hire being, however, in this case limited to six hours per diem. The certificate should state that the officer attended in his official capacity, and should give the number of hours detention.—*Colonial Office Codified Regulations*, 1890, pp. 86 and 87.

JURISDICTION.

1. GENERAL.

Arrest, see Ordinance No. 32,—1827 § 2
 „ „ 40,—1828 § 22
 „ „ 73,—1830 § 9-11

Criminal Procedure.

No. 40—1828.]

[Jan. 25th, 1828.

Of Arrest and Preliminary Examination.

Arrest by
Judges, Re-
sident Magis-
trates, and
Justices of the
Peace.

22. *The Chief Justice, or any Judge of the Supreme Court, the Judge of the Police Court in Cape Town, any Resident Magistrate or Justice of the Peace, who has knowledge of any crime or breach of the peace, by seeing it committed, may himself arrest the offenders, or by a verbal order he may authorize others to do so, who may follow the offenders thus pointed out to them, and execute this order on them out of the presence of such magistrate, if they fly.*⁽¹⁾

Arrest by
sheriffs, super-
intendents of
police, field-
cornets, and con-
stables.

23. The sheriff and his deputies, superintendent of police and his deputy, and field-cornets, and all constables, police officers, or other officers of the law proper to the execution of criminal warrants, have the power of arresting, in cases of crimes or breaches of the peace committed in their presence, or of the commission of which they have credible information from others; and after taking the offender, such sheriff or other officer shall immediately carry the offender before the nearest Magistrate, to be dealt with according to law.⁽²⁾

Warrants for
the apprehension
of offenders by
Judges, Re-
sident Magis-
trates, and
Justices of the
Peace.

24. ⁽³⁾*The Chief Justice of the Colony and Judges of the Supreme Court, the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, may lawfully grant a warrant for the apprehension of any offender, on a written application setting forth the offence alleged to have been committed, and that from information taken upon oath⁽⁴⁾ there are reasonable grounds of suspicion against him, subscribed by the Attorney-General, by the Superintendent of Police in Cape Town, or by the Clerk of the Peace of the district, or upon the information to the like effect of any person made on oath before the Judge or Magistrate granting the warrant.*

Warrants of
Judges of the
Supreme Court
of effectual
throughout the
Colony.

Those of Re-
sident Magis-
trates, &c.,
within the local
limits of their
jurisdiction.

25. ⁽⁵⁾*A warrant issued by the Chief Justice, or any of the Judges of the Supreme Court, has effect and may be executed anywhere in the limits of the Colony and its dependencies; warrants issued by the Judge of Police in Cape Town, Resident Magistrates, and Justices of the Peace, have effect and can be executed only within the local limits within which the jurisdiction of the said Magistrate, Judge of Police, or Justice of the Peace, is appointed to be exercised; but the Judge of Police in Cape Town, every Resident Magistrate, and every Justice of the Peace, on production to him of a warrant issued by any other Magistrate, is bound to grant his concurrence to it by an indorsement thereof, after which the warrant may be*

Indorsement of
warrants by Re-
sident Magis-
trate.

⁽¹⁾ See *infra* Ordinance No. 73, § 11, which supersedes this Section.

⁽²⁾ *Vide* Ordinance No. 73, § 12.

⁽³⁾ Superseded by § 9, Ord. 73, *infra*.

⁽⁴⁾ Buchanan, 1868, p. 140.

⁽⁵⁾ Amended by § 10, Ord. 73, *infra*.

executed within the local limits of the jurisdiction of the Magistrate so indorsing it.

No. 40, 1898.

26. Every warrant so issued shall be to apprehend the party described in it, and to bring him before any Resident Magistrate, or the Judge of Police in Cape Town, or Justice of the Peace, for examination.⁽¹⁾

Tenor of warrant.

27. The superintendent of police in Cape Town, or his deputy, and every clerk of the peace,⁽²⁾ on receiving information of any crime or offence having been committed within his district (except it shall plainly appear to be proper for the cognizance of a Court of summary jurisdiction), shall commence a preparatory examination before the Judge of Police in Cape Town, Resident Magistrate, or Justice of the Peace within whose jurisdiction respectively such superintendent of police in Cape Town and his deputy, and clerks of the peace, are appointed to exercise their respective offices; and, for that purpose, shall immediately apply for a warrant for the apprehension of any person who, from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and for summoning those persons whom it shall appear necessary to examine as witnesses: and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of any Magistrate, to enforce the appearance of such witnesses, or in the event of its not being known or suspected by whom the crime or offence was committed, a warrant for summoning as witnesses such persons as aforesaid: and the superintendent of police in Cape Town, and every field-cornet and every constable, on receiving information of any crime or offence, except as in the case hereinbefore excepted, shall give immediate information thereof to the clerk of the peace of the district within which such superintendent of police, field-cornet, or constable exercises his office: in order that the said clerk of the peace may institute or attend the preparatory examination, or give such directions concerning the conduct thereof, as to him shall seem necessary.⁽³⁾

Preparatory examination.

Warrant for the apprehension of suspected persons.
Summons of witnesses.

Information by superintendent of police, field-cornets, and constables, to the clerks of the peace.

28. When in the course of any trial in any inferior Court it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction or more proper for the cognizance of a superior Court, then the Judge or Magistrate before whom such inferior Court is held shall stop the trial, and commence anew the examination of the person accused, and of the witnesses as in a preparatory examination, and the examinations so taken shall be reported in the manner hereinafter directed as to other examinations.⁽⁴⁾

When a trial in an inferior Court should be stopped and a preparatory examination should be instituted.

29. Where there is any danger that delay may defeat the ends of justice, the Judge of Police in Cape Town, any Resident Magistrate, or any Justice of the Peace, may himself commence taking the preparatory examinations; but he shall, without delay, give information thereof, in Cape Town and the district thereof, to the superintendent of police or his deputy, and in any other district to the clerk of the peace of such district.⁽⁵⁾

Proceedings where delay might endanger the ends of justice.

⁽¹⁾ *Vide* Ordinance No. 73, § 19.

⁽²⁾ For procedure, where there are no clerks of the peace, see § 11, Ord. 8, 1852. See also § 29 of this Ordinance.

⁽³⁾ *Vide* Ordinance No. 73, § 5.

⁽⁴⁾ *Vide* Ordinance No. 73, §§ 7 and 8. *R. v. Nkalayi and others* 1A175.

⁽⁵⁾ *Vide* Ordinance No. 73, § 5.

No. 40, 1898.

Examination of all persons who can give information.

Evidence on oath at preparatory examination.

Depositions to be in writing and in the presence of the accused.

Right of cross-examination.

Depositions to be signed by the Magistrate and witnesses.

Warrant for the apprehension of witnesses who refuse to attend.

Committal of witnesses who refuse to give evidence.

Recognizance to give evidence at the trial.

Prisoner to be carried before the Magistrate named in the warrant, or, if the warrant be general, to the nearest magistrate.

Prisoner to be in his sound and sober senses.

Prisoner at the close of examination in support of the charge, to be cautioned that he is not obliged to make any statement criminating himself. Statement how to be signed.

Committal of prisoner for trial.

30. Every officer conducting a preparatory examination shall cause to be examined by the Magistrate before whom the same is taken every person who can give any information on the subject of the crime or offence under investigation.

31. (1) All preparatory examinations shall be taken upon oath, and every witness, before giving his evidence, shall make oath before the Magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth, the whole truth, and nothing but the truth; and each witness shall be examined apart from the others. The depositions shall be taken down in writing in presence of the accused party, or if taken in his absence shall be afterwards read over to him in the presence of the witnesses making the same, whom he shall be entitled to cross-examine; and such depositions shall be signed by the Magistrate and by the witnesses; and in case of their incapacity or refusal then the same shall be signed by two persons in whose presence the same were taken. And if any person, having been thereto summoned, shall refuse or neglect to attend, then the Magistrate shall issue a warrant to apprehend and bring him for examination; and if any witness shall obstinately refuse to give evidence he may be committed to and detained in prison until he shall comply. Every Magistrate before whom any preparatory examination is taken may lawfully bind any witness, by recognizance, to appear to give evidence at the trial, upon being summoned thereto, and upon his refusing may commit and detain in prison the person so refusing until he shall comply. (2)

32. Where any person suspected of a crime or offence is apprehended by virtue of the warrant hereinbefore described, the officer who executes the warrant shall, with all convenient speed, carry the prisoner before the Magistrate named in the warrant; or if the warrant is general, before the nearest Magistrate within the district in which the apprehension takes place.

33. When any person suspected of a crime or offence is brought before any Magistrate for examination, such Magistrate before commencing the examination of the witnesses, shall satisfy himself that the prisoner is in his sound and sober senses.

34. After the examination of the witnesses in support of the charge, in presence of the prisoner, or after the examinations have been read over to him if taken in his absence, the Magistrate shall ask the said prisoner what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement that may criminate himself, and that what he shall say may be used in evidence against him. The prisoner's statement shall then be taken down in writing, in so far as the same is relevant to the charge, and the same, after being read over to him, shall be subscribed by him if he will subscribe the same and also by the Magistrate and by one person at the least who may be present thereat. (3)

35. When there shall appear to any Magistrate sufficient grounds for putting any person brought before him on trial for the crime or

(1) As to production in evidence of depositions see § 41 Ordinance 72, and § 5 Act 17, 1874. As to taking recognizances from witnesses see § 20 Ordinance 73.

(2) *Vide* Ordinance No. 73, § 8.

(3) This statement is to be received in evidence upon production; § 4 Act 17 of 1874. Accused may give evidence § 6 Act 13, 1886.

offence of which he is accused, the Magistrate shall grant a warrant to commit him to the gaol of the district, there to be detained till brought to trial for the said crime or till liberated in due course of law; which warrant shall clearly express the crime or offence with which the prisoner is charged. ⁽¹⁾

No. 40, 1838.

36. Where sufficient grounds do not appear for at once committing the prisoner for trial, or for discharging him, and there shall appear to the Magistrate probability that further evidence may be produced, the Magistrate may grant a warrant for committing him for further examination. Such re-committal for further examination may, if necessary, take place oftener than once, upon sufficient cause appearing to the said Magistrate, which cause shall be expressed in the warrant of re-commitment; and every warrant of commitment for examination shall specify the time when the prisoner is again to be brought before the Magistrate for examination.

Committal for further examination.

37. Until the warrant for commitment for trial is made out, no prisoner, even although the offence of which he is accused is a bailable offence, can insist on being admitted to bail; but it is in the discretion of the Magistrate to admit a prisoner accused of a bailable offence to bail, before the preparatory examinations are concluded.

Bail before conclusion of examination in the Magistrate's discretion.

38. No prisoner under commitment for examination shall be allowed the access of his friends or legal advisers but by the authority of a Magistrate, and under such restrictions as to him may appear requisite; but after commitment for trial, the prisoner's friends and legal advisers shall have free access to him, subject to the regulations of the Magistrate, to whom the superintendence of the prison and the safe custody of the prisoners are entrusted.

Access of friends and legal advisers by authority of Magistrate before committal. After committal, friends and legal advisers to have free access.

* * * * *

40. It is the duty of the officer who conducts the preparatory examination to make any local inspections which the particular circumstances of the case may render necessary; and in cases of homicide and serious injury to the person of any individual to cause the dead body of the person injured to be examined by a regularly admitted medical man, if any such can be procured, and if not then by the best qualified person or persons that can be obtained, who shall draw up and subscribe a written statement of the appearances and facts observed on such examinations: provided, always, that in all cases the like duties, inspections, and examinations shall and may be in like manner performed and conducted by any field-cornet, each in his own particular field-cornetcy.

The officer conducting preparatory examination to make local inspection, and to cause post-mortem and other examinations to be made.

41. The officer conducting the preparatory examination or the field-cornet, as the case may be, shall cause all writings and other articles exhibited by the witnesses in the course thereof and likely to be used in evidence on the prisoner's trial, to be inventoried and labelled, or otherwise marked in the presence of the person producing the same, so as they may be capable of being identified at the prisoner's trial, and shall cause the same to be kept in safe custody until the trial, and to be then produced.

Field-cornets to perform like duties in their field-cornetries.

42. The Chief Justice of the Colony, and Judges of the Supreme Court, or the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, upon an information taken on oath being transmitted to them by the Attorney-General, the Superintendent

All articles to be used in evidence on the trial, to be labelled for identification, and to be kept in safe custody.

Search warrants on information of reasonable grounds for suspecting the concealment of stolen goods.

(1) See § 21 Ordinance 73 and § 5 Act 15, 1864. R. v. O'Donnell, 2 J. 310.

JUSTICES OF THE PEACE.

JURISDICTION:

1. GENERAL.
2. SPECIAL.

1. GENERAL JURISDICTION.

No. 32, 1827.]

[Dec. 11, 1827.

For creating Justices of the Peace in this Colony⁽¹⁾.

Preamble.

WHEREAS it is expedient for the preservation of the public peace, the security of individuals, and the due execution of the laws, that Magistrates be appointed in the several districts of this Colony, with power to apprehend, commit to prison, or hold to bail, all vagrants, rioters, robbers, or other notorious offenders found within their several jurisdictions, in order that such offenders may be brought to trial, and with power to do all other such matters and things as the said Magistrates may by law be appointed to do: Be it therefore enacted, and it is hereby enacted, that from and after the passing of this Ordinance it shall and may be lawful for the Governor or Lieutenant-Governor for the time being, from time to time, as occasion may require, to appoint Justices of the Peace under the great seal of the Colony of the Cape of Good Hope, for Cape Town and the district thereof, and the several country districts respectively, who shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the Chief Justice, or any Judge of the Supreme or Circuit Courts, or before the Civil Commissioner or any Magistrate of the district for which such Justice is assigned to act (who are hereby empowered and required to administer the same), and the clerks of the peace respectively shall enter in the records of their respective districts that the said oaths were duly administered and taken.

The Governor may appoint Justices of the Peace.

Oath of office and of allegiance to be taken by Justices.

Power and duties of Justices.

Inquiry into offences.

2. And be it further enacted, that from and after the passing of this Ordinance, the persons who shall be so appointed as aforesaid to act as Justices of the Peace, shall have power, and are hereby required, to preserve the public peace, and for that purpose, to call to their aid and assistance all field-cornets, constables, and peace officers, military officers, and others His Majesty's subjects, to quell all riots, brawls, or other disturbance, and to lodge all rioters, brawlers, vagrants, and disturbers of the peace in any prison within their respective jurisdiction, to be dealt with according to law; and they are hereby authorized and required to inquire of all crimes and offences committed, or alleged to be committed, within their respective jurisdictions,

⁽¹⁾ Any J.P. becoming insolvent forfeits his commission, § 12, Act 38 of 1884, *infra*.

and for that purpose to summon⁽¹⁾ and examine upon oath all witnesses touching such crimes and offences, and to apprehend and cause to be apprehended, all criminals and offenders, and to deal with them according to law: And the said Justices of the Peace are hereby authorized and required, upon information or complaint in writing upon oath made to them, or any of them, to cause to come before them all those who have used any threats towards any person or persons, whether regarding their bodies or the firing of their houses, and to require of them sufficient security for the peace, or their good behaviour towards His Majesty or his subjects; and if they shall not give such security, then to cause them to be safely kept in prison till they shall find such security.⁽¹⁾

No. 32, 1827.

Power to require security for the peace and for good behaviour.

3. And be it further enacted, that all Justices of the Peace shall cause all informations and complaints made to them in writing upon oath, as aforesaid, and all recognizances or other securities for keeping the peace or for good behaviour taken by them, to be sent to the clerk of the peace⁽²⁾, acting for the district or place for which the said Justices are assigned respectively, within twenty-one days after such information or complaint made or security taken; and for every such information or complaint made as aforesaid and not sent as aforesaid, and for every such recognizance or security taken, and not sent as aforesaid, every Justice so offending shall incur and be liable to the payment of a fine of twenty pounds sterling.

Informations on oath and recognizances, &c., to be transmitted by Justices to the clerk of the peace within twenty-one days.

Penalty on failure, £20.

4. And be it further enacted, that all gaolers and keepers of prisons shall receive into their custody, and safely keep, every person committed to their charge by warrant under the hand and seal of any Justice of the Peace, until they be discharged by due course of law.

Gaolers to receive into custody persons committed by warrant of Justices.

5. And be it further enacted, that no process shall be sued out against, nor any copy of any process at the suit of a subject shall be served on, any Justice of the Peace, for anything by him done in the execution of his office, until notice in writing of such intended process shall have been delivered to him, or left at the usual place of his abode by the attorney or agent for the party who intends to sue or cause the same to be sued out, or served, at least one calendar month⁽³⁾ before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which such party has, or claims to have, against such Justice of the Peace, on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode.

Notice of action against Justices for acts done in execution of their office to be given at least one month before process is sued out.

6. And be it further enacted, that no person shall recover any judgment against any Justice of the Peace, in any case where the action shall be grounded upon any act of the defendant as Justice of the Peace, unless it is proved upon the trial of such action that such notice was given as aforesaid⁽³⁾; but in default thereof such Justice shall be entitled to a judgment, and his full costs.

On failure of such notice, judgment to be given in favour of Justice.

7. And be it further enacted, that it shall and may be lawful for such Justice of the Peace within one calendar month after such notice given as aforesaid to tender amends to the party complaining, or to the attorney or agent of such party; and in case the same is not

Tender of amends by Justice and further proceedings in action.

(1) Renck v. Oosthuizen, 1 Juta, 99.

(2) Clerks of the Peace no longer exist, and these documents are now sent to the Resident Magistrate.

(3) Stadler v. Marsh., 3 Menz. 467; De Beer v. Tinley, 2 R 35.

No. 32, 1897.

accepted, to plead such tender to any action to be brought against him grounded on such process, together with the plea of "not guilty," and any other plea with the leave of the Court; and if the Court before which such action is brought shall find the amends so tendered to have been sufficient, then such Court shall give judgment for the defendant, and in such case, or in case the plaintiff shall not proceed in his action, or in case judgment shall be given for the defendant on any proceeding in the nature of a demurrer, such Justice shall be entitled to like costs as he would have been entitled to, in case he had pleaded not guilty, only; and if the Court shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant on such other plea or pleas, then the said Court shall give judgment for the plaintiff, and such damages as the said Court shall think proper, together with the costs of suit.

Payment into Court, in case of no tender or insufficient tender of amends.

8. And be it further enacted, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall depend, at any time before the hearing of the said cause, to pay into Court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court.

Evidence for plaintiff restricted to the cause of action contained in the notice.

9. And be it further enacted, that no evidence shall be permitted to be given by the plaintiff on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

No action to be brought against constables, &c., for act in obedience to warrant, until after demand and refusal of warrant.

10. And be it further enacted, that no action shall be brought against any constable, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at any usual place of his abode by the party or parties intending to bring such action, or by his, or their, attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case, after such demand and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the Justice or Justices who signed or sealed the said warrant, defendant or defendants, that, on producing and proving such warrant at the trial of such action, the Court shall give their judgment for the defendant or defendants, notwithstanding any defect of jurisdiction in such Justice or Justices, and if such action be brought jointly against such Justice or Justices, and also against such constable, or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the Court shall find for such constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the Justice or Justices, that in such case, the plaintiff or plaintiff shall recover his or their costs against him or them, to be taxed in such manner by the proper officer, as to include such

If demand of perusal and copy of warrant have been duly complied with, then on production of warrant at the trial, judgment to be given for the defendant,

notwithstanding defect of jurisdiction in the Justice.

costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such judgment shall be found as aforesaid.

Costs, how to be taxed.

11. And be it further enacted, that where the plaintiff, in any such action against any Justice of the Peace, shall obtain a judgment, in case the Judge before whom the cause shall be tried, shall, in open Court, certify, on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

If the Judge certify on the record that the Justices have wilfully and maliciously committed the injury, which is the cause of action, double costs to be allowed.

12. And be it further enacted, that no action shall be brought against any Justice of the Peace for anything done in the execution of his office, or against any constable or other officer, or person acting as aforesaid, unless commenced within six calendar months after the act committed.

Actions to be brought within six months after commission of the act complained of.

SCHEDULE.

Form of the Oath of Allegiance.

I, —, do sincerely promise and swear, that I will be faithful, and bear true allegiance to His Majesty King George. So help me God!

Oath of allegiance.

Form of the Oath of Office to be taken and subscribed by Justices of the Peace.

I, A. B., do swear that, as Justice of the Peace in the — of —, in all articles in the Governor or Lieutenant-Governor's commission to me directed, I will do equal right to the rich and to the poor, to the best of my ability and power, and according to the laws and customs of the Colony, and Ordinances and Proclamations thereof: And I will not be of counsel of any quarrel depending before me: And the issues, fines, and amerciaments that shall happen to be made, and all forfeitures that shall fall before me, I will cause to be entered without any concealment or embezzling, and will truly send them to the Colonial Treasury, or otherwise dispose of them according to law: I will not obstruct the cause of justice for gift or other cause, but well and truly will discharge my duty as Justice of the Peace, without partiality, favour, or affection. So help me God!

Oath of office.

Actions against Justices of the Peace.

Convicted Felons Act.

No. 1, 1860.]

[May 21, 1860.

* * * * *

10. If any suit or action be brought against any Resident Magistrate, Justice of the Peace⁽¹⁾, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

General issue may be pleaded in all actions.

(1) See also §§ 5—12, Ord. 32, 1827, *Supra*.

*Insolvency of Justices of the Peace.
Insolvent Law Amendment Act.*

No. 38, 1884.]

[July 25, 1884.

Justice of the
Peace becoming
insolvent to lose
his commission.

12. If the estate of any person holding a commission as a Justice of the Peace shall be surrendered or sequestrated as insolvent, such commission shall upon such surrender or sequestration be considered as annulled and cancelled.

Corrupt Practices at Elections.

No. 9, 1883.]

[September 12, 1883.

Penalties in-
curred by candi-
dates cognizant
of corruption.

38. Where it is found by the court upon an election petition under this Act, that corrupt practices have been committed by or with the knowledge and consent of any candidate, the election of such candidate—if he has been elected—shall be void, and a fresh election shall thereupon be held, and such candidate shall be incapable of being elected to or of sitting in either House of Parliament during the five years next after the date of his so being found guilty; and he shall further be incapable during the said period of five years

- (1) Of being registered as a voter and voting at any election for members of parliament in this colony; and
- (2) Of holding any divisional council or municipal office; and
- (3) Of holding any judicial office and of being appointed and of acting as a justice of the peace.

Penalties for
persons other
than candidates
guilty of cor-
ruption.

39. Any person other than a candidate found guilty of corrupt practices at an election by any competent court shall during the five years next after the time at which he is so found guilty, be incapable of being elected to and sitting in Parliament, and also during the said period of five years

- (1) Of being registered as a voter and of voting at any election for members of Parliament in this Colony; and
- (2) Of holding any divisional council or municipal office; and
- (3) Of holding any judicial office and of being appointed and of acting as a justice of the peace.

Penalties for
perjury under
this Act.

40. If at any time after any person has become disqualified as aforesaid by virtue of this Act, the witnesses or any of them on whose testimony such person shall have so become disqualified shall upon the prosecution of such person be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to which the petition was presented, to order, and the said court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

Power of
appeal.

41. Any person found guilty of corrupt practices as aforesaid, or any candidate whose election has been declared void as aforesaid by any circuit court, may appeal from the decision of such circuit court to the court of appeal of the Cape of Good Hope, and such court of appeal shall affirm, reverse, or alter the decision of such circuit court as justice may require, provided such appeal shall be noted, and prosecuted within the time and according to the manner of proceeding in appeals from circuit courts.

* * * * *

Commissioners of the Court.

No. 7, 1857.

Rule of Court, No. 193.

It is ordered, that all Justices of the Peace and any persons hereafter duly appointed to act as Justices of the Peace, within the Colony, be appointed and empowered to act as Commissioners of this Court, for the purpose of taking affidavits ^{To take affidavits.} (¹) therein.

Witnesses' Expenses (Criminal Cases).

No. 7—1857.]

AN ACT

[June 29, 1857.]

For regulating the payment of the expenses of Field-Cornets and other Public Officers attending to give evidence in certain criminal cases.

Whereas Field-Cornets and other public officers are occasionally summoned to attend as witnesses in criminal cases for the purpose of giving evidence regarding matters with which they have been concerned solely in their official capacity: And whereas doubts exist whether, when so attending, they can lawfully be allowed any expenses other than the ordinary expenses provided by Ordinance No. 59, entitled "Ordinance for regulating the Payment of the Expenses of Witnesses attending to give Evidence on Criminal Trials and Preparatory Examinations:" And whereas it is proper to remove such doubts and to provide that such witnesses shall be considered when so attending to give evidence as officially engaged in the public service, and be paid accordingly: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows, that is to say:—

Preamble.

1. As often as any field-cornet, field-commandant, assistant field-cornet, or Justice of the Peace shall attend as a witness before any Court or Justice of the Peace in this Colony, under such circumstances that he would if an ordinary witness be entitled to be allowed expenses under the Ordinance aforesaid, No. 59, at and after the rate therein provided, he shall, in case he shall have been summoned to give evidence regarding matters with which he has been concerned solely in his official capacity, receive and be allowed expenses at and after the rate of remuneration for field-cornets when from home on service, set forth in Ordinance No. 9, 1848, entitled "Ordinance for regulating the Duties and Remuneration of Field-cornets;" that is to say, he shall receive as and for his expenses an allowance for horse-hire at the rate of one shilling and sixpence per hour ⁽²⁾ together with a further allowance at the rate of seven shillings and sixpence per day.

Field - cornet, field - commandant, or Justice of the Peace, summoned to give evidence in regard to matters with which they have been officially concerned to be remunerated under Ordinance No. 9, 1848.

(¹) *Re Campbell.* Buchanan's Reports, 1874, p. 2.

(²) An hour is allowed for every six miles travelled. Both horse-hire and personal allowance are paid for the time of necessary detention, the allowance for horse-hire being, however, in this case limited to six hours per diem. The certificate should state that the officer attended in his official capacity, and should give the number of hours detention.—*Colonial Office Codified Regulations*, 1890, pp. 86 and 87.

JURISDICTION.

1. GENERAL.

Arrest, see Ordinance No. 32,—1827 § 2
 „ „ 40,—1828 § 22
 „ „ 73,—1830 § 9-11

Criminal Procedure.

No. 40—1828.]

[Jan. 25th, 1828.

Of Arrest and Preliminary Examination.

Arrest by
Judges, Re-
sident Magis-
trates, and
Justices of the
Peace.

22. *The Chief Justice, or any Judge of the Supreme Court, the Judge of the Police Court in Cape Town, any Resident Magistrate or Justice of the Peace, who has knowledge of any crime or breach of the peace, by seeing it committed, may himself arrest the offenders, or by a verbal order he may authorize others to do so, who may follow the offenders thus pointed out to them, and execute this order on them out of the presence of such magistrate, if they fly.*⁽¹⁾

Arrest by
sheriffs, super-
intendents of
police, field-
cornets, and con-
stables.

23. The sheriff and his deputies, superintendent of police and his deputy, and field-cornets, and all constables, police officers, or other officers of the law proper to the execution of criminal warrants, have the power of arresting, in cases of crimes or breaches of the peace committed in their presence, or of the commission of which they have credible information from others; and after taking the offender, such sheriff or other officer shall immediately carry the offender before the nearest Magistrate, to be dealt with according to law.⁽²⁾

Warrants for
the apprehension
of offenders by
Judges, Re-
sident Magis-
trates, and
Justices of the
Peace.

24. ⁽³⁾ *The Chief Justice of the Colony and Judges of the Supreme Court, the Judge of Police in Cape Town, the Resident Magistrates, and all Justices of the Peace, may lawfully grant a warrant for the apprehension of any offender, on a written application setting forth the offence alleged to have been committed, and that from information taken upon oath⁽⁴⁾ there are reasonable grounds of suspicion against him, subscribed by the Attorney-General, by the Superintendent of Police in Cape Town, or by the Clerk of the Peace of the district, or upon the information to the like effect of any person made on oath before the Judge or Magistrate granting the warrant.*

Warrants of
Judges of the
Supreme Court
of effectual
throughout the
Colony.
Those of Re-
sident Magis-
trates, &c.,
within the local
limits of their
jurisdiction.

25. ⁽⁵⁾ *A warrant issued by the Chief Justice, or any of the Judges of the Supreme Court, has effect and may be executed anywhere in the limits of the Colony and its dependencies; warrants issued by the Judge of Police in Cape Town, Resident Magistrates, and Justices of the Peace, have effect and can be executed only within the local limits within which the jurisdiction of the said Magistrate, Judge of Police, or Justice of the Peace, is appointed to be exercised; but the Judge of Police in Cape Town, every Resident Magistrate, and every Justice of the Peace, on production to him of a warrant issued by any other Magistrate, is bound to grant his concurrence to it by an indorsement thereof, after which the warrant may be*

Indorsement of
warrants by Re-
sident Magis-
trate.

⁽¹⁾ See *infra* Ordinance No. 73, § 11, which supersedes this Section.

⁽²⁾ *Vide* Ordinance No. 73, § 12.

⁽³⁾ Superseded by § 9, Ord. 73, *infra*.

⁽⁴⁾ Buchanan, 1868, p. 140.

⁽⁵⁾ Amended by § 10, Ord. 73, *infra*.

executed within the local limits of the jurisdiction of the Magistrate so indorsing it.

No. 40, 1828.

26. Every warrant so issued shall be to apprehend the party described in it, and to bring him before any Resident Magistrate, or the Judge of Police in Cape Town, or Justice of the Peace, for examination.⁽¹⁾

Tenor of warrant.

27. The superintendent of police in Cape Town, or his deputy, and every clerk of the peace,⁽²⁾ on receiving information of any crime or offence having been committed within his district (except it shall plainly appear to be proper for the cognizance of a Court of summary jurisdiction), shall commence a preparatory examination before the Judge of Police in Cape Town, Resident Magistrate, or Justice of the Peace within whose jurisdiction respectively such superintendent of police in Cape Town and his deputy, and clerks of the peace, are appointed to exercise their respective offices; and, for that purpose, shall immediately apply for a warrant for the apprehension of any person who, from information taken upon oath, may be reasonably suspected of having committed the said crime or offence, and for summoning those persons whom it shall appear necessary to examine as witnesses: and in case of refusal or failure to attend after due proof of the service of such summons, a further warrant under the hand of any Magistrate, to enforce the appearance of such witnesses, or in the event of its not being known or suspected by whom the crime or offence was committed, a warrant for summoning as witnesses such persons as aforesaid: and the superintendent of police in Cape Town, and every field-cornet and every constable, on receiving information of any crime or offence, except as in the case hereinbefore excepted, shall give immediate information thereof to the clerk of the peace of the district within which such superintendent of police, field-cornet, or constable exercises his office: in order that the said clerk of the peace may institute or attend the preparatory examination, or give such directions concerning the conduct thereof, as to him shall seem necessary.⁽³⁾

Preparatory examination.

Warrant for the apprehension of suspected persons.
Summons of witnesses.

Information by superintendent of police, field-cornets, and constables, to the clerk of the peace.

28. When in the course of any trial in any inferior Court it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction or more proper for the cognizance of a superior Court, then the Judge or Magistrate before whom such inferior Court is held shall stop the trial, and commence anew the examination of the person accused, and of the witnesses as in a preparatory examination, and the examinations so taken shall be reported in the manner hereinafter directed as to other examinations.⁽⁴⁾

When a trial in an inferior Court should be stopped and a preparatory examination should be instituted.

29. Where there is any danger that delay may defeat the ends of justice, the Judge of Police in Cape Town, any Resident Magistrate, or any Justice of the Peace, may himself commence taking the preparatory examinations; but he shall, without delay, give information thereof, in Cape Town and the district thereof, to the superintendent of police or his deputy, and in any other district to the clerk of the peace of such district.⁽⁵⁾

Proceedings where delay might endanger the ends of justice.

⁽¹⁾ *Vide* Ordinance No. 73, § 19.

⁽²⁾ For procedure, where there are no clerks of the peace, see § 11, Ord. 8, 1852. See also § 29 of this Ordinance.

⁽³⁾ *Vide* Ordinance No. 73, § 5.

⁽⁴⁾ *Vide* Ordinance No. 73, §§ 7 and 8. *R. v. Nkalayi and others* 1A175.

⁽⁵⁾ *Vide* Ordinance No. 73, § 5.

No. 59, 1829.

Payment by
cheque on the
Civil Commis-
sioner.

of the Peace shall make out, certify, and allow the same, and make out and sign cheques on the Civil Commissioner for the amount allowed to each witness.⁽¹⁾

6. And be it further enacted that the clerk of the peace, or in his absence the presiding Magistrate or Justice of the Peace, shall, on a bill being so prepared, certified, and allowed, and on the witness signing on the said bill a receipt for the sum due to him for his expenses, make out, sign, and deliver to each witness a cheque on the Civil Commissioner of the district within which the trial or examination took place for the amount due to him; and shall further transmit every bill so signed forthwith to the said Civil Commissioner, who shall make payment of the amount of every cheque so drawn on him, to the holder thereof, if presented for payment within three calendar months after its date, and not afterwards. And if any Civil Commissioner shall not pay the amount of such cheque when duly presented to him, the party entitled to the same may sue for the recovery thereof in any competent Court.⁽²⁾

⁽¹⁾ See § 4 Ord. 26 of 1847.

⁽²⁾ Payment of witnesses' expenses is now made by Treasury Drafts drawn in accordance with regulations framed under Act 30 of 1875.

JUSTICES OF THE PEACE.

2. SPECIAL JURISDICTION.

Aliens (Naturalization of.)

No. 2, 1883.]

[August 22, 1883.

* * * * *

4. The Governor may (if he think fit) grant Letters of Naturalization in this Colony to any alien, or to any person who has been naturalized as a British subject elsewhere than in this Colony, who shall apply for naturalization and conform to the provisions of this Act: Provided that no Letters of Naturalization shall be granted until⁽¹⁾ there be delivered to the Colonial Secretary a certificate signed by some Resident Magistrate, Justice of the Peace, or Field-cornet to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute who has either never been convicted of and sentenced for treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery, or, if he has been so convicted and sentenced, that he has received a free pardon. Governor may grant Letters of Naturalization.

* * * * *

6. Every alien, being a male, to whom the Governor may grant Letters of Naturalization, shall before the delivery of such letters to him make and subscribe before a Justice of the Peace a declaration of allegiance in the form contained in the third schedule, which declaration shall be of the same force and effect as an oath of allegiance. Declaration of allegiance to be taken.

* * * * *

THE THIRD SCHEDULE.

Declaration of Allegiance.

I, A.B., of ———, do sincerely promise that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Colony of the Cape of Good Hope, and to her heirs and successors, according to Law.

A.B.

Declared this
day of

18

Before me :

Justice of the Peace.

⁽¹⁾ Printed as amended by Act No. 35, 1889, § 2.

Animals Diseases (General).

No. 2, 1881.]

[May 21, 1881.]

* * * * *

Any animal affected with contagious disease to be isolated. Notice of such isolation to be given to Resident Magistrate, Field-cornet, nearest Justice of the Peace, and Inspector of native location.

1. Every person having in his possession or under his charge any animal affected with rinderpest or cattle plague, redwater, pleuropneumonia or lung-sickness, glanders, farcy, or any other contagious or infectious disease ⁽¹⁾, shall keep such animal separate from all animals not so affected, and shall forthwith give notice to the Resident Magistrate of the district or the Field-cornet of the ward in which such animal is, to the nearest Justice of the Peace, or inspector of native location, and also to all the occupiers of all contiguous lands not being lands situated within the limits of any town or village, that such animal is so affected. Every Field-cornet, Justice of the Peace, or inspector of native location, receiving such notice shall forthwith give information thereof to the Resident Magistrate of the district.

Resident Magistrate, Field-cornet, Justice of the Peace, or Inspector of locations, with two landowners to inspect affected animal, and may order such animal to be destroyed or isolated.

2. Whenever any such notice or information shall have been received by any Resident Magistrate, Field-cornet, Justice of the Peace, or inspector of native location, or it shall otherwise have come to the knowledge of any such person, that any animal in his district, ward, or location, is affected as aforesaid, he shall, with all convenient speed, call to his assistance any two farmers, being landowners, who are hereby authorised and required, upon being so called upon, to render such assistance; and he shall, together with such farmers forthwith proceed to inspect such animal, and to hold an inquiry into the circumstances of the case, and if they, or any two of them, shall be of opinion that such animal is affected with any such disease as aforesaid, and that there is danger of such disease spreading, they shall forthwith cause such animal to be destroyed or isolated, or dealt with in such other manner as they, or any two of them, may deem expedient in order to prevent the spread of such disease. The carcasses of all animals destroyed under the provisions of this Act shall be forthwith buried or burnt by the owner ⁽²⁾ thereof, and such owner shall not be entitled to any compensation for any animals destroyed under the provisions of this section.

Carcasses of animals destroyed to be buried or burnt. No compensation to owner.

Magistrate, &c., on suspicion may cause inspection to be held.

3. Whenever it shall be made to appear to any Resident Magistrate, Field-cornet, Justice of the Peace, or inspector of native location that there is good reason to suspect that any animal in his district, ward, or location is affected as aforesaid, it shall and may be lawful for any such person to cause such inspection or inquiry or investigation to be made as may be necessary in order to ascertain whether such animal is so affected.

Provisions of Section 2 may apply to animal not actually affected. Compensation allowed if animal is destroyed under authority of Commissioner of Crown Lands.

4. If, upon any inquiry such as is provided for in the second section of this Act, the three persons therein mentioned shall unanimously be of opinion that it is necessary, in order to prevent the spread of any such disease as aforesaid, to destroy, isolate, or deal in any other manner with any animal not known to be actually affected with any disease it shall be lawful for the said persons to deal with such animals as if the same were actually affected with some such disease as aforesaid; and in case any such animal shall be destroyed under the provisions of this section, it shall be lawful for the three persons aforesaid, or any two of them, if they think fit, to direct that the owner of such

⁽¹⁾ This Act not to apply to foot and mouth disease and scab, § 10.

⁽²⁾ R. v. Stirk, 5 EDC, 171.

animal shall be paid such compensation for the same as they may under the circumstances deem fair and equitable, and such compensation shall be payable out of the public revenue: Provided, however, that no animal shall be destroyed under the provisions of this section without the authority of the Commissioner of Crown Lands and Public Works first had and obtained.

No. 14, 1870.

13. The word "animal" in this Act shall be taken to mean any horse, gelding, mare, mule, ass, bull, ox, cow, heifer, calf, sheep, goat, pig, or ostrich.

Construction of "animal."

Cattle Removal.

No. 14, 1870.]

[May 5, 1870.

6⁽¹⁾ The person causing any stock to be impounded as aforesaid shall communicate to the poundmaster the circumstances under which the same were seized, and the poundmaster shall forthwith notify, by advertisement to be published or made known in the manner in which the pound notices for such district are published or made known, the number and description of the stock, and such information regarding the same as the person impounding the stock shall have communicated to him.

Particulars, &c., of stock impounded to be advertised by poundmaster.

7. Any person claiming stock so impounded as his property, or lawfully in his possession, may apply to the Resident Magistrate or any Justice of the Peace of the district for an order for the liberation thereof, and such Magistrate or Justice of the Peace shall inquire into the case and if satisfied that such stock is the property of the claimant, or was lawfully in his possession then such Magistrate or Justice of the Peace shall give an order, in writing, directing the poundmaster of the pound in which such stock shall be impounded to deliver the same to the claimant upon payment of the pound fees and charges; and the poundmaster shall, at the time of the delivery of the stock, grant a certificate for the protection of such stock until the arrival thereof at the place to which it is intended to remove the same.

Person claiming impounded stock, may apply to magistrate, and proceedings thereupon.

8. Should the person claiming any stock so seized and impounded as aforesaid fail to show to the satisfaction of such Magistrate or Justice of the Peace that the stock claimed is his property, or was lawfully in his possession, or should the stock be unclaimed for a period of one month after notice given by such poundmaster as aforesaid, then the same shall be dealt with in all respects as if such stock was impounded under the provisions of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and Prevention of Trespasses," as the same Ordinance is, or may hereafter be, altered or amended by any Act or Acts of Parliament; and the proceeds of sale of any such stock shall be paid into the public treasury.

Poundmaster to grant certificate for stock released.

Ordinance No. 16 of 1847 to apply to stock not released.

9. If any person driving stock shall, upon being thereto required, produce to the person requiring the same a certificate under the provisions of this Act, ⁽²⁾ and notwithstanding the stock found with such person shall be conveyed to the pound upon the allegation that the

Owner entitled to compensation for stock wrongfully impounded.

⁽¹⁾ §§ 2-5 will be found under Special J.P.s *infra*.

⁽²⁾ Printed as amended by Act No. 20, 1889, § 1.

No. 14, 1870.

Penalty on wilful or malicious impounding of stock.

certificate produced is not proper and sufficient, ⁽¹⁾ then the owner of the stock shall be entitled to recover compensation from such person for any damage which he shall have sustained by reason of the impounding of such stock, including all pound fees payable or already paid.

10. Any person who shall wilfully and maliciously, and without probable cause, wrongfully impound any stock under colour of the provisions of this Act, shall be deemed guilty of a crime, and shall upon conviction be liable to be imprisoned, with or without hard labour, and with or without spare diet, for any term not exceeding three months or, if the Court shall see fit, to pay a fine not exceeding in amount ten pounds sterling, and further to pay to the owner of such stock such amount to cover expenses and damages as the Magistrate before whom the case is brought shall award, and as shall not have been awarded under the ninth section of this Act.

Penalty on forcible interference with stock proceeding to pound or rescuing impounded stock.

11. Any person, who shall by force or violence, or by threatening to use force or violence, prevent or attempt to prevent any Magistrate or Justice of the Peace, field-cornet, police officer, constable, or landholder from conveying to the pound any stock which he shall have a right under this Act to convey to the pound, or who shall rescue, or attempt to rescue such stock against the will of the person in charge thereof, after the same shall have been impounded with any poundmaster, shall upon conviction, be fined any sum not exceeding ten pounds, and shall, in default of payment, be imprisoned with or without hard labour, for any term not exceeding two months.

Penalty on false certificate.

12. Any person who shall knowingly grant any such certificate as aforesaid which shall contain any wilfully false statement or description in respect of any matter material to be stated or described therein, or who shall fraudulently alter any such certificate as aforesaid, shall upon conviction be imprisoned, with or without hard labour, for a period not exceeding six months.

Definition of word "stock."

Exemptions.

13. The word "stock" in this Act shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that stock under saddle, or pack-saddle, cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police, shall not be deemed to be stock within the meaning of this Act.

Governor may proclaim Act to be in force, and may suspend its operation.

14. It shall be lawful for the Governor, at the request of the divisional council of any division, from time to time to put this Act in force in such division by proclamation published in the *Government Gazette*; and upon the like request, and in like manner or when to the Governor it shall seem expedient, to suspend the operation of the Act for such time as the Governor may deem necessary: Provided that certificates for the removal of stock granted by Resident Magistrate, Justice of the Peace, Field-cornets, or landholders in places where this Act shall not be in operation shall be good, valid, and effectual in any division in which this Act shall be in force: and as often as this Act shall be in force in any division of the Colony, then the third and fourth sections of this Act shall be in force throughout the entire Colony.

Certificates granted in places not under operation of Act, valid.

Sections 3 and 4 to apply to whole Colony.

Powers of seizing stock suspected to have been stolen not affected.

15. No certificate which shall be issued under the provisions of this Act shall be construed to prevent any Magistrate, Justice of the Peace, police officer, or constable from seizing or detaining any stock which

(¹) Printed as amended by Act No. 20, 1889, § 1.

he may have reasonable ground for supposing to have been stolen : but every such Magistrate, Justice of the Peace, police officer, and constable shall possess such and the same powers in respect to the seizure and detention of such stock as he possessed before the passing of this Act.

No. 14, 1870.

16. This Act may be cited for all purposes as "The Cattle Removal Act, 1870."

Short title.

Cattle Removal.

No. 20, 1889.]

[Aug. 9, 1889.

* * * * *

2. Any Field-cornet, police officer, Justice of the Peace, or landed proprietor on his own land, or any road adjoining such land, authorised under the provisions of the fifth section of the said Act, as amended by this Act, to take possession of any stock, shall be and is hereby further authorised and empowered without warrant to arrest the person who shall be driving the said stock, or in whose custody or possession the said stock may be found, and to bring or cause to be brought such person to the nearest gaol, there to be detained and dealt with, subject to the provisions of this Act, as though such arrest had been effected upon a charge of some criminal offence duly made against such person.

Arrest of person driving or having custody or possession of stock liable to be seized or impounded under Act No. 14 of 1870.

Detention of arrested person as upon suspicion of theft.

* * * * *

5. The provisions of the tenth section of the said Act shall *mutatis mutandis* apply to every person who shall wilfully and maliciously and without probable cause, arrest or detain, or cause to be arrested or detained, any other person under colour of the provisions of this Act.

Penalty for wrongful arrest of any person under colour of this Act.

6. No stock shall be deemed to be removed within the meaning of the said Act or of this Act merely by reason that such stock shall be found moving from place to place within the limits of any land or immovable property to the occupation whereof, or to the use whereof for purposes of grazing stock or allowing them to drink water, the landholder or other person owning or interested in the said stock is entitled.

When stock not deemed to be removed from place to place.

Cattle Thefts (Ostrich Feathers and Skins).

No. 32, 1883.]

[Sept. 27th, 1883.

* * * * *

2. Every purchaser of ostrich feathers under a licence as in the last preceding section provided, shall keep a book in which he shall forthwith enter, or cause to be entered, as to ostrich feathers purchased by him

To keep special book. Entries therein.

- (a) The date of the purchase of such feathers.
- (b) The number, or weight, and description of feathers purchased.
- (c) The name, residence, and occupation of the vendor.
- (d) The price given.
- (e) What has satisfied the purchaser that the vendor had a right to sell such feathers.

Such entry shall be in the form B., set forth in the schedule to this Act, and such book may be inspected free of charge at all reasonable

Form in Schedule.

No. 18, 1886. unless it shall be proved that such admission was not in fact duly made, or that the signatures or marks thereto are not in fact the signatures or marks of the persons whose signatures or marks they purport to be.

* * * * *

Fines and Penalties.

No. 6, 1839⁽¹⁾.]

[Aug. 14, 1839.

Ordinance for the more effectual Recovery of Fines and Penalties before Justices of the Peace and Resident Magistrates⁽²⁾ on Conviction of Offenders in this Colony; and for the Application of the same in certain Cases.

WHEREAS in some of the laws and Ordinances which are now in force in this Colony; whereby fines and penalties are imposed on persons for certain offences therein mentioned no adequate provision is made for the recovery of the said fines and penalties: And whereas it is expedient that all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on offenders by any law or Ordinance in this Colony for the recovery of which no provision has been or shall be expressly made in any such law or Ordinance should be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing and publication of this Ordinance all fines and penalties not exceeding forty pounds sterling which have been or shall be imposed on persons for offences by any law or Ordinance which now is or at any time hereafter shall be in force in this Colony for the recovery of which no provision has been or shall be expressly made in such law or Ordinance shall be recovered before the Resident Magistrate of the district or place in which the respective offences shall be committed, and shall in case of non-payment thereof be levied by warrant of distress and sale of the goods and chattels of the offender or offenders or enforced at the discretion of such Resident Magistrate by such special commitment in execution as is hereinafter prescribed for and declared to be generally applicable to the recovery of fines and penalties inflicted by any of the laws of this Colony.

Fines and penalties exceeding forty pounds, recovery of.

Imprisonment substituted where nulla bona for payment of fine.

2. And whereas by several laws and Ordinances which are now in force in this Colony certain fines and penalties are inflicted on persons convicted of certain offences which are directed to be recovered before a Justice of the Peace or Resident Magistrate within their respective jurisdictions, who is authorized to issue forth his warrant for levying such fines and penalties by distress and sale of the goods and chattels of the offender or offenders, but no further remedy is provided in case no sufficient goods and chattels of such offender or offenders can be found whereon to levy such fines and penalties, for remedy whereof be it further enacted that from and after the passing and publication of this Ordinance, whenever it shall appear to any such Justice of the Peace or Resident Magistrate by whom any fine or penalty shall be adjudged to be paid upon the return of any such warrant of distress that no sufficient goods and chattels of the offender or offenders can be

⁽¹⁾ *Vide* Act 6, 1875, § 5.

⁽²⁾ *R. v. Nonosi*, 1 A 154.

found whereon to levy such fine or penalty within the jurisdiction of such Justice of the Peace or Resident Magistrate, it shall be lawful for such Justice of the Peace or Resident Magistrate to issue forth his warrant for committing such offender or offenders to the common gaol for any term not exceeding three calendar months, unless such fine or penalty shall be sooner paid; or in case it shall appear to the satisfaction of such Justice of the Peace or Resident Magistrate, either by the confession of the offender or offenders or otherwise, that he, she, or they hath not or have not sufficient goods or chattels within the jurisdiction of such Justice of the Peace or Resident Magistrate whereon to levy such fine or penalty, such Justice of the Peace or Resident Magistrate may at his discretion without issuing any warrant of distress proceed to the commitment of such offender or offenders in such and the like manner as if a warrant of distress had been issued and a return of *nulla bona* made thereon as aforesaid.

No. 6, 1839.

3. And be it further enacted that in case any offender or offenders committed to the common gaol for non-payment of any such fine or penalty shall at any time during the period of his, her, or their imprisonment pay or cause to be paid to the keeper of such common gaol the full amount of such fine or penalty it shall be lawful for such keeper of such common gaol and he is hereby required forthwith to discharge such offender or offenders from his custody.

Release from imprisonment on payment of fine.

4. And be it further enacted that all fines and penalties recovered under any of the laws or Ordinances of this Colony shall unless it be otherwise expressly provided by such laws or Ordinances respectively be paid and applied as follows, that it to say, a part not exceeding one half or less than one fourth thereof shall be paid to the informer and the remainder into the Colonial Treasury.

Application of fines.

No. 6, 1845.]

[March, 10, 1845.]

Oaths and Declarations.

* * * * *

4.(¹) And whereas voluntary and extra-judicial oaths have been occasionally administered by Resident Magistrates and Justices of the Peace in regard to matters wholly unconnected with any suit, inquiry, or proceeding at law, and not in any wise pending or at issue before such Magistrates or Justices: And whereas the practice of administering such oaths is one productive of injurious consequences and which should be totally suppressed: Be it therefore enacted that it shall not be lawful for any Magistrate or Justice of the Peace or other person authorized to administer an oath to administer or cause or allow to be administered any oath, affidavit, or solemn affirmation touching any matter or thing whereof such Magistrate, Justice, or other person hath not or doth not believe himself to have jurisdiction or cognizance under and by virtue of some law or Ordinance in force at the time being.

Prohibition of extra-judicial oaths and affidavits.

5. And be it enacted that nothing in this Ordinance contained shall extend or apply to any oath, affidavit, or solemn affirmation which now is or hereafter may be taken or made in the course of any proceeding in any Court of Justice or in the course of any proceeding under Ordinance No. 97, intituled "An Ordinance for enabling certain Persons having respectively the just, lawful, and undisputed

Exceptions from application of Ordinance.

(¹) J.P.s to administer oaths to witnesses appearing before them, Act 4. 1871 § 12.

- No. 6, 1845. Right to certain Lands and Houses to procure the same to be en-registered as their Property in the Land Registry," or in the course of any proceeding under Ordinance No. 6, 1843, entitled "An Ordinance for regulating the due collection, administration, and distribution of Insolvent Estates within this Colony."
- Time of taking effect. 6. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

SCHEDULE.

I, A. B., do solemnly and sincerely declare that [*here set forth the effect of the oath, affidavit, or solemn affirmation for which the declaration shall be substituted*]; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6, 1845, intituled "An Ordinance for substituting Declarations in the place of certain Oaths and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Declared, &c.

PREPARATORY EXAMINATION.

- See Ordinance No. 40—1828 §§ 27—38, 40, 41, 46, 51.
 " 72—1830 §§ 15, 41.
 " 8—1852 § 11.
 See Act No. 4—1861 §§ 3, 12.
 " " 17—1874 §§ 4, 5.
 " " 13—1886 §§ 6—8.

Warrants (Apprehension).

No. 1—1860.] * * * * * [May 21, 1860.

Justice of the Peace or Resident Magistrate may grant warrant to apprehend offenders.

7. It shall be lawful for any Justice of the Peace or Resident Magistrate having credible information, on oath, that any person such as is in the first section of this Act described is harboured in any dwelling house or tenement, or other place within his jurisdiction, to grant a search warrant to any one or more constables or officers of the law proper for the execution of criminal warrants, to search for and apprehend such offender, and any person found and apprehended by virtue of such warrant shall, by such constable or constables, be forthwith taken before a Resident Magistrate or Justice of the Peace for examination, to be further dealt with according to law.

- See also Ordinance No. 40—1828 §§ 24—27.
 " 73—1830 §§ 9—11.
 " 8—1852 § 11.

Warrants (Distress).

See under :—Cattle Removal.
 " Liquor Licensing.

Warrants (Search).

No. 2, 1870.]

[May 5, 1870.

* * * * *

7. Seamen's property detained, bought, exchanged, pawned, or received, in contravention of this Act, shall, for the purposes of search warrant, be stolen property, within the provisions of section forty-two of Ordinance No. 40, and reasonable suspicion that any such property is concealed in any place shall, under the restrictions in such last mentioned section contained, justify the issue of a search warrant as in such section is provided.

* * * * *

See also Ordinance No. 40, 1828, § 42.

See under :—Cattle thefts.

„ Insolveney.

„ Liquor Licensing.

„ Wills.

*Witnesses' Expenses (Criminal Cases).*No. 59, 1829.⁽¹⁾]

[April 2, 1829.

* * * * *

3. And be it further enacted that the expenses to be allowed to witnesses, for subsistence and travelling to and from the Court or other place to which they shall be summoned, and during the necessary attendance, shall in no case exceed four shillings and sixpence per diem of six hours if the witnesses have travelled in a carriage or on horseback, and one shilling and sixpence per diem of six hours if on foot; and in cases where a witness resides within five miles of the place to which he is summoned, the expenses to be allowed shall not exceed one shilling and sixpence per diem; and in cases where a witness shall reside within one mile of such place where any preparatory examination is taken, no expenses shall be allowed for attending such examination.

4. And be it further enacted that the Clerk of the Peace shall, on all criminal trials at the instance of the public prosecutor, make out bills of expenses for the witnesses in each case, one of which bills shall be for the witnesses summoned and appearing on the part of the public prosecutor, and the other for the witnesses summoned and appearing for the accused party, in cases where such certificates have been obtained as aforesaid, each of which bills shall be made out in duplicate, and the Clerk of the Peace shall certify that the distance and time charged in the said bills are correct, and submit them to the Magistrate or Registrar of the Court before which the trial has been holden, who shall, unless the Court or Magistrate disallow to any witness his expenses on account of improper conduct, insert the rate of allowances (in no case exceeding the rate hereinbefore set forth), and the sum due to each witness, and shall certify the amount of each several bill of expenses so allowed.⁽²⁾

5. And be it further enacted that in cases of preparatory examinations, the clerk of the peace shall make out and certify similar bills of expenses; and in his absence, the presiding Magistrate or Justice

⁽¹⁾ Amended by Ordinance No. 69.

⁽²⁾ See § 3 Ord. 26 of 1847. See also Govt. Notice No. 670, 22 July, 1885.

No. 59, 1829.

of the Peace shall make out, certify, and allow the same, and make out and sign cheques on the Civil Commissioner for the amount allowed to each witness.⁽¹⁾

Payment by
cheque on the
Civil Commis-
sioner.

6. And be it further enacted that the clerk of the peace, or in his absence the presiding Magistrate or Justice of the Peace, shall, on a bill being so prepared, certified, and allowed, and on the witness signing on the said bill a receipt for the sum due to him for his expenses, make out, sign, and deliver to each witness a cheque on the Civil Commissioner of the district within which the trial or examination took place for the amount due to him; and shall further transmit every bill so signed forthwith to the said Civil Commissioner, who shall make payment of the amount of every cheque so drawn on him, to the holder thereof, if presented for payment within three calendar months after its date, and not afterwards. And if any Civil Commissioner shall not pay the amount of such cheque when duly presented to him, the party entitled to the same may sue for the recovery thereof in any competent Court.⁽²⁾

⁽¹⁾ See § 4 Ord. 26 of 1847.

⁽²⁾ Payment of witnesses' expenses is now made by Treasury Drafts drawn in accordance with regulations framed under Act 30 of 1875.

JUSTICES OF THE PEACE.

2. SPECIAL JURISDICTION.

Aliens (Naturalisation of.)

No. 2, 1883.]

[August 22, 1883.

* * * * *

4. The Governor may (if he think fit) grant Letters of Naturalization in this Colony to any alien, or to any person who has been naturalized as a British subject elsewhere than in this Colony, who shall apply for naturalization and conform to the provisions of this Act: Provided that no Letters of Naturalization shall be granted until⁽¹⁾ there be delivered to the Colonial Secretary a certificate signed by some Resident Magistrate, Justice of the Peace, or Field-cornet to the effect that the applicant is known to the person so signing, and that to the best of such person's belief and knowledge the applicant is a person of good repute who has either never been convicted of and sentenced for treason, murder, culpable homicide, rape, theft, fraud, perjury, or forgery, or, if he has been so convicted and sentenced, that he has received a free pardon.

Governor may grant Letters of Naturalization.

* * * * *

6. Every alien, being a male, to whom the Governor may grant Letters of Naturalization, shall before the delivery of such letters to him make and subscribe before a Justice of the Peace a declaration of allegiance in the form contained in the third schedule, which declaration shall be of the same force and effect as an oath of allegiance.

Declaration of allegiance to be taken.

* * * * *

THE THIRD SCHEDULE.

Declaration of Allegiance.

I, A.B., of ———, do sincerely promise that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the Colony of the Cape of Good Hope, and to her heirs and successors, according to Law.

A.B.

Declared this
day of

18

Before me :

Justice of the Peace.

⁽¹⁾ Printed as amended by Act No. 35, 1889, § 2.

Animals Diseases (General).

No. 2, 1881.]

[May 21, 1881.

* * * * *

Any animal affected with contagious disease to be isolated. Notice of such isolation to be given to Resident Magistrate, Field-cornet, nearest Justice of the Peace, and Inspector of native location.

1. Every person having in his possession or under his charge any animal affected with rinderpest or cattle plague, redwater, pleuropneumonia or lung-sickness, glanders, farcy, or any other contagious or infectious disease ⁽¹⁾, shall keep such animal separate from all animals not so affected, and shall forthwith give notice to the Resident Magistrate of the district or the Field-cornet of the ward in which such animal is, to the nearest Justice of the Peace, or inspector of native location, and also to all the occupiers of all contiguous lands not being lands situated within the limits of any town or village, that such animal is so affected. Every Field-cornet, Justice of the Peace, or inspector of native location, receiving such notice shall forthwith give information thereof to the Resident Magistrate of the district.

Resident Magistrate, Field-cornet, Justice of the Peace, or Inspector of locations, with two landowners to inspect affected animal, and may order such animal to be destroyed or isolated.

2. Whenever any such notice or information shall have been received by any Resident Magistrate, Field-cornet, Justice of the Peace, or inspector of native location, or it shall otherwise have come to the knowledge of any such person, that any animal in his district, ward, or location, is affected as aforesaid, he shall, with all convenient speed, call to his assistance any two farmers, being landowners, who are hereby authorised and required, upon being so called upon, to render such assistance; and he shall, together with such farmers forthwith proceed to inspect such animal, and to hold an inquiry into the circumstances of the case, and if they, or any two of them, shall be of opinion that such animal is affected with any such disease as aforesaid, and that there is danger of such disease spreading, they shall forthwith cause such animal to be destroyed or isolated, or dealt with in such other manner as they, or any two of them, may deem expedient in order to prevent the spread of such disease. The carcasses of all animals destroyed under the provisions of this Act shall be forthwith buried or burnt by the owner ⁽²⁾ thereof, and such owner shall not be entitled to any compensation for any animals destroyed under the provisions of this section.

Carcasses of animals destroyed to be buried or burnt. No compensation to owner.

Magistrate, &c., on suspicion may cause inspection to be held.

3. Whenever it shall be made to appear to any Resident Magistrate, Field-cornet, Justice of the Peace, or inspector of native location that there is good reason to suspect that any animal in his district, ward, or location is affected as aforesaid, it shall and may be lawful for any such person to cause such inspection or inquiry or investigation to be made as may be necessary in order to ascertain whether such animal is so affected.

Provisions of Section 2 may apply to animal not actually affected. Compensation allowed if animal is destroyed under authority of Commissioner of Crown Lands.

4. If, upon any inquiry such as is provided for in the second section of this Act, the three persons therein mentioned shall unanimously be of opinion that it is necessary, in order to prevent the spread of any such disease as aforesaid, to destroy, isolate, or deal in any other manner with any animal not known to be actually affected with any disease it shall be lawful for the said persons to deal with such animals as if the same were actually affected with some such disease as aforesaid; and in case any such animal shall be destroyed under the provisions of this section, it shall be lawful for the three persons aforesaid, or any two of them, if they think fit, to direct that the owner of such

⁽¹⁾ This Act not to apply to foot and mouth disease and scab, § 10.

⁽²⁾ R. v. Stirk, 5 EDC, 171.

animal shall be paid such compensation for the same as they may under the circumstances deem fair and equitable, and such compensation shall be payable out of the public revenue: Provided, however, that no animal shall be destroyed under the provisions of this section without the authority of the Commissioner of Crown Lands and Public Works first had and obtained.

No. 14, 1870.

13. The word "animal" in this Act shall be taken to mean any horse, gelding, mare, mule, ass, bull, ox, cow, heifer, calf, sheep, goat, pig, or ostrich.

Construction of "animal."

Cattle Removal.

No. 14, 1870.]

[May 5, 1870.

6⁽¹⁾ The person causing any stock to be impounded as aforesaid shall communicate to the poundmaster the circumstances under which the same were seized, and the poundmaster shall forthwith notify, by advertisement to be published or made known in the manner in which the pound notices for such district are published or made known, the number and description of the stock, and such information regarding the same as the person impounding the stock shall have communicated to him.

Particulars, &c., of stock impounded to be advertised by poundmaster.

7. Any person claiming stock so impounded as his property, or lawfully in his possession, may apply to the Resident Magistrate or any Justice of the Peace of the district for an order for the liberation thereof, and such Magistrate or Justice of the Peace shall inquire into the case and if satisfied that such stock is the property of the claimant, or was lawfully in his possession then such Magistrate or Justice of the Peace shall give an order, in writing, directing the poundmaster of the pound in which such stock shall be impounded to deliver the same to the claimant upon payment of the pound fees and charges; and the poundmaster shall, at the time of the delivery of the stock, grant a certificate for the protection of such stock until the arrival thereof at the place to which it is intended to remove the same.

Person claiming impounded stock, may apply to magistrate, and proceedings thereupon.

8. Should the person claiming any stock so seized and impounded as aforesaid fail to show to the satisfaction of such Magistrate or Justice of the Peace that the stock claimed is his property, or was lawfully in his possession, or should the stock be unclaimed for a period of one month after notice given by such poundmaster as aforesaid, then the same shall be dealt with in all respects as if such stock was impounded under the provisions of the Ordinance No. 16, 1847, entitled "Ordinance for the better regulation of Pounds and Prevention of Trespasses," as the same Ordinance is, or may hereafter be, altered or amended by any Act or Acts of Parliament; and the proceeds of sale of any such stock shall be paid into the public treasury.

Poundmaster to grant certificate for stock released.

Ordinance No. 16 of 1847 to apply to stock not released.

9. If any person driving stock shall, upon being thereto required, produce to the person requiring the same a certificate under the provisions of this Act, ⁽²⁾ and notwithstanding the stock found with such person shall be conveyed to the pound upon the allegation that the

Owner entitled to compensation for stock wrongfully impounded.

⁽¹⁾ §§ 2-5 will be found under Special J.P.s *infra*.

⁽²⁾ Printed as amended by Act No. 20, 1889, § 1.

No. 14, 1870.

Penalty on wilful or malicious impounding of stock.

certificate produced is not proper and sufficient, (1) then the owner of the stock shall be entitled to recover compensation from such person for any damage which he shall have sustained by reason of the impounding of such stock, including all pound fees payable or already paid.

10. Any person who shall wilfully and maliciously, and without probable cause, wrongfully impound any stock under colour of the provisions of this Act, shall be deemed guilty of a crime, and shall upon conviction be liable to be imprisoned, with or without hard labour, and with or without spare diet, for any term not exceeding three months or, if the Court shall see fit, to pay a fine not exceeding in amount ten pounds sterling, and further to pay to the owner of such stock such amount to cover expenses and damages as the Magistrate before whom the case is brought shall award, and as shall not have been awarded under the ninth section of this Act.

Penalty on forcible interference with stock proceeding to pound or rescuing impounded stock.

11. Any person, who shall by force or violence, or by threatening to use force or violence, prevent or attempt to prevent any Magistrate or Justice of the Peace, field-cornet, police officer, constable, or landholder from conveying to the pound any stock which he shall have a right under this Act to convey to the pound, or who shall rescue, or attempt to rescue such stock against the will of the person in charge thereof, after the same shall have been impounded with any poundmaster, shall upon conviction, be fined any sum not exceeding ten pounds, and shall, in default of payment, be imprisoned with or without hard labour, for any term not exceeding two months.

Penalty on false certificate.

12. Any person who shall knowingly grant any such certificate as aforesaid which shall contain any wilfully false statement or description in respect of any matter material to be stated or described therein, or who shall fraudulently alter any such certificate as aforesaid, shall upon conviction be imprisoned, with or without hard labour, for a period not exceeding six months.

Definition of word "stock."

13. The word "stock" in this Act shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that stock under saddle, or pack-saddle, cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police, shall not be deemed to be stock within the meaning of this Act.

Exemptions.

Governor may proclaim Act to be in force, and may suspend its operation.

14. It shall be lawful for the Governor, at the request of the divisional council of any division, from time to time to put this Act in force in such division by proclamation published in the *Government Gazette*; and upon the like request, and in like manner or when to the Governor it shall seem expedient, to suspend the operation of the Act for such time as the Governor may deem necessary: Provided that certificates for the removal of stock granted by Resident Magistrate, Justice of the Peace, Field-cornets, or landholders in places where this Act shall not be in operation shall be good, valid, and effectual in any division in which this Act shall be in force: and as often as this Act shall be in force in any division of the Colony, then the third and fourth sections of this Act shall be in force throughout the entire Colony.

Certificates granted in places not under operation of Act, valid.

Sections 3 and 4 to apply to whole Colony.

Powers of seizing stock suspected to have been stolen not affected.

15. No certificate which shall be issued under the provisions of this Act shall be construed to prevent any Magistrate, Justice of the Peace, police officer, or constable from seizing or detaining any stock which

(1) Printed as amended by Act No. 20, 1889, § 1.

he may have reasonable ground for supposing to have been stolen: but every such Magistrate, Justice of the Peace, police officer, and constable shall possess such and the same powers in respect to the seizure and detention of such stock as he possessed before the passing of this Act.

No. 14, 1870.

16. This Act may be cited for all purposes as "The Cattle Removal Act, 1870."

Short title.

Cattle Removal.

No. 20, 1889.]

[Aug. 9, 1889.

* * * * *

2. Any Field-cornet, police officer, Justice of the Peace, or landed proprietor on his own land, or any road adjoining such land, authorised under the provisions of the fifth section of the said Act, as amended by this Act, to take possession of any stock, shall be and is hereby further authorised and empowered without warrant to arrest the person who shall be driving the said stock, or in whose custody or possession the said stock may be found, and to bring or cause to be brought such person to the nearest gaol, there to be detained and dealt with, subject to the provisions of this Act, as though such arrest had been effected upon a charge of some criminal offence duly made against such person.

Arrest of person driving or having custody or possession of stock liable to be seized or impounded under Act No. 14 of 1870.

Detention of arrested person as upon suspicion of theft.

* * * * *

5. The provisions of the tenth section of the said Act shall *mutatis mutandis* apply to every person who shall wilfully and maliciously and without probable cause, arrest or detain, or cause to be arrested or detained, any other person under colour of the provisions of this Act.

Penalty for wrongful arrest of any person under colour of this Act.

6. No stock shall be deemed to be removed within the meaning of the said Act or of this Act merely by reason that such stock shall be found moving from place to place within the limits of any land or immovable property to the occupation whereof, or to the use whereof for purposes of grazing stock or allowing them to drink water, the landholder or other person owning or interested in the said stock is entitled.

When stock not deemed to be removed from place to place.

Cattle Thefts (Ostrich Feathers and Skins).

No. 32, 1883.]

[Sept. 27th, 1883.

* * * * *

2. Every purchaser of ostrich feathers under a licence as in the last preceding section provided, shall keep a book in which he shall forthwith enter, or cause to be entered, as to ostrich feathers purchased by him

To keep special book. Entries therein.

- (a) The date of the purchase of such feathers.
- (b) The number, or weight, and description of feathers purchased.
- (c) The name, residence, and occupation of the vendor.
- (d) The price given.
- (e) What has satisfied the purchaser that the vendor had a right to sell such feathers.

Such entry shall be in the form B., set forth in the schedule to this Act, and such book may be inspected free of charge at all reasonable

Form in Schedule.

No. 32, 1883.

times by written order of any Resident Magistrate, Justice of the Peace, or Field-cornet.

Suspected persons may be apprehended without warrant.

Penalty for possession of feathers not properly accounted for.

Persons with hides and skins not properly accounted for.

Penalty.

Penalty for wrongful &c. arrest.

5. If there be reasonable grounds to believe that any person is or has been in unlawful possession of ostrich feathers, it shall be competent for any Justice of the Peace, Field-cornet, Landholder or Police Constable to apprehend such person without warrant and to convey him in custody before any Resident Magistrate having jurisdiction, ⁽¹⁾ and if it be found that he is or has been in possession of ostrich feathers, and is not able to give a satisfactory account of his possession of such feathers to such Magistrate he shall on conviction be liable to pay a fine of not exceeding two hundred pounds, or to be imprisoned with or without hard labour, for any period not exceeding two years, or to both such fine and such imprisonment.

6. If any person is found conveying any skin or hide, and on being questioned thereto, is unable to give a satisfactory account of his possession of such skin or hide, it shall be lawful for any Justice of the Peace, Field-cornet, Landholder or Police Constable to apprehend such person without warrant and to convey him before any Magistrate having jurisdiction, and upon conviction such person shall be liable to pay a fine of not exceeding one hundred pounds, or to be imprisoned with or without hard labour for not exceeding twelve months, or to both such fine and such imprisonment.

7. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding twenty pounds, and to pay to the arrested person such amount, not exceeding the sum of fifty pounds, as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Cattle Thefts (Wool, Mohair, and Carcasses).

Act No. 19 of 1884.]

ACT

[July 25th, 1884.]

To Provide for the Better Repression of Thefts of Wool, Mohair, and Slaughtered Carcasses.

Preamble.

WHEREAS the provisions of the "Ostrich Feathers and Skins Theft Repression Act," being Act No. 32 of 1883, do not extend or apply to theft of wool, mohair, and the slaughtered carcasses of sheep, goats and oxen; and it is desirable that such, or similar, provisions should extend to such last mentioned thefts: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Suspected person may be apprehended without warrant.

1. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any wool, mohair, slaughtered

(¹) See Act 13—1886, § 5.

carcases, or parts of slaughtered carcasses of sheep, goats, or other animals⁽¹⁾, it shall be competent for any Justice of the Peace, Field-cornet, landholder, or police constable to apprehend such person without warrant, and convey him in custody before any Resident Magistrate having jurisdiction, and if it be found that he is or has been in possession of any wool, mohair, slaughtered carcasses or parts of carcasses as aforesaid, and is not able to give a satisfactory account⁽²⁾ of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft, and shall thereupon be dealt with as if he had originally been charged with such crime.

No. 19, 1884.

2. If any person is reasonably suspected to be carrying and conveying away in any sack, knapsack, or other covering, any wool, mohair, carcasses, or portions of carcasses of slaughtered sheep, goats, or other animals, it shall be lawful for any Justice of the Peace, Field-cornet, landholder, or police constable to stop such person and examine the contents of such sack, knapsack, or other covering, and in case such person shall, upon such examination, be found to be in possession of any of the articles aforesaid, it shall be lawful for such Justice of the Peace, Field-cornet, landholder, or police constable to apprehend him without warrant and to convey him before any Magistrate having jurisdiction, and in case he shall be unable to give a satisfactory explanation of such possession to such Magistrate, he shall be deemed to be guilty of the crime of theft, and shall be thereupon dealt with as if he had been originally charged with such crime.

Sacks, &c., of persons suspected to be conveying Wool, &c., may be searched, and persons apprehended without warrant.

If unable to give explanation to be deemed guilty of theft.

3. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding Twenty Pounds, and to pay to the arrested person such amount, not exceeding the sum of Fifty Pounds, as and for damages, as the Magistrate before whom such arrested person is brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid: Provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Penalty for wrongful arrest.

4. This Act may be cited as the "Wool, Mohair, and Carcases Theft Repression Act, 1884."

Short title.

No. 1, 1860.]

[May 21st, 1860.

Convicted Felons.

* * * * *

1. No convicted felon or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under sentence in any British colony or possession other than this colony for any capital or other offence, nor any person not at liberty by reason of any conviction or sentence to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of this Colony, or come to be in any place within the limits of this Colony, under the penalty, on conviction thereof before any

Imprisonment of felons who enter the Colony.

⁽¹⁾ To include Domesticated Ostriches, Act 12, 1885.

⁽²⁾ R. v. Feitje Williamson (Magistrates' Cases Reviewed) 6 Juts 58.

No. 1, 1880. competent Court, if a male, of being sentenced to imprisonment with or without hard labour for a period not exceeding three years, and, if a female, of being imprisoned with or without hard labour for a period not exceeding two years.

Justice of the Peace or Resident Magistrate may grant warrant to apprehend offenders.

7. It shall be lawful for any Justice of the Peace or Resident Magistrate having credible information, on oath, that any person such as is in the first section of this Act described is harboured in any dwelling-house or tenement or other place within his jurisdiction, to grant a search warrant to any one or more constables or officers of the law proper for the execution of criminal warrants, to search for and apprehend such offender, and any person found and apprehended by virtue of such warrant shall, by such constable or constables, be forthwith taken before a Resident Magistrate or Justice of the Peace for examination, and to be further dealt with according to law.

Divisional Councils' Valuation.

No. 40, 1889.]

[August 16, 1889.]

Form of declaration by valuer.

246. Every valuer shall, before entering upon the valuation entrusted to him, make before some Justice of the Peace, a solemn declaration in the terms following:—

"I, ———, do solemnly and sincerely declare that I will to the best of my skill and knowledge, and without fear, favour or prejudice, truly and impartially appraise and value all such property as I shall be required to value in the division of ———, for the purpose of assessment. And I make this solemn declaration conscientiously intending to fulfil the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled 'An Ordinance for substituting Declarations in the place of certain Oaths, and for the suppression of voluntary and extra-judicial Oaths and Affidavits.'

"Declared at ———, this ——— day of ———,

"Before me, ———."

Dog Tax.

No. 40, 1889.]

[Aug. 16th, 1889.]

SUB-DIVISION V.—PART I.

ANIMALS, LICENCES TO KEEP DOGS, &c.

Tax on dogs may be imposed by council and collected by means of licences or otherwise.

221. Every council shall have the right to impose a duty or tax upon dogs within its division, which tax shall be collected by means of licences to be granted by such council, or in such other manner as such council shall determine, subject, however, to the proviso in the next succeeding section contained.

Rules and regulations may be framed by council, subject to Governor's approval, and publication in the *Gazette* and public newspapers.

222. The council shall have the power to frame rules and regulations in regard to the form of licences for keeping dogs, the manner of taking the same out, in regard to any other mode of collecting the duty or tax hereby authorised to be imposed: Provided, however, that all such rules and regulations shall be subject to the approval of the Governor, and such rules and regulations if so approved of, shall

be published in the *Gazette*, and some one or more newspapers, if any, published or circulating within the division for which such rules and regulations are framed.

No 40, 1889.

223. The funds collected by any council as the proceeds of the said duty or tax or of fines and penalties under the two hundred and thirty-second section of this Act shall be applied by such council for the destruction of wild carnivorous animals or for the purposes of the two hundred and seventy-eighth section of this Act.

Application of funds derived from tax on dogs.

224. The amount of the duty or tax authorised to be levied shall not be more than five shillings, nor less than two shillings and sixpence for each dog: Provided, always, that no duty shall be payable for or in respect of any dog under the age of three months or thereabouts.

Tax to be not greater than 5s. nor less than 2s. 6d.; no tax on dogs under three months of age.

225. Every person keeping a dog within any division, the council of which shall have imposed the duty or tax in this Act provided for, without having paid such duty, shall be subject, on conviction, to a fine not exceeding the sum of one pound sterling, or, in case of non-payment, to imprisonment with or without hard labour for any term not exceeding fourteen days, unless such fine be sooner paid.

Penalty for keeping dog in any division without paying tax imposed in such division.

226. If any Justice of the Peace, Field-cornet, Constable, or other Officer of the Peace, or any proprietor or occupier of land, shall request any person travelling with a dog in his custody, charge, or possession, to produce his licence for keeping such dog, or to afford other sufficient proof that he has paid a duty or tax for the same under the provisions of this Act, or has a licence to keep the same from some Municipality or Village Board of Management, and shall, after failure of such production, have no reason to believe that such person either has a fixed abode or is licensed to keep such dog, then and in such case it shall be the duty of such officer, proprietor, or occupier to demand from such person the particulars of his name and abode, and the place whither he is travelling, and thereupon it shall be the duty of such officer, proprietor, or occupier, with all convenient speed, to send to the council of the division, a report stating such particulars as he shall have obtained, and describing the person in whose custody, charge, or possession, such dog shall have been found or seen; and upon receiving such report such council shall, if such person travelling as aforesaid shall have described himself as living in any other division, send such report to the council of such other division: Provided that if any person travelling as aforesaid, from whom such particulars as aforesaid shall have been demanded, shall refuse to give answers thereto, or shall wilfully give false answers thereto, he shall be deemed to be guilty of the offence of contravening this section of this Act, and shall, upon conviction, be liable to a fine not exceeding one pound, or in case of non-payment to imprisonment, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid; and provided that, subject to the provisions of the three next succeeding sections of this Act, it shall be lawful for any Justice of the Peace, Field-cornet, Constable, or other Officer of the Peace, or for any collector of the duty or tax on dogs lawfully appointed by any council for that purpose, to destroy any dog found by him at any place within the limits of the division or district within which such Justice of the Peace, Field-cornet, Constable, or other Officer of the Peace has authority, or such collector is appointed to collect the duty or tax on dogs, and it shall be lawful for any proprietor or occupier of

Powers of Justices of the Peace, Field-cornets, constables and officers of the peace, and of proprietors or occupiers of land, to call upon travellers with dogs to produce licence or proof of payment of tax under this part of this Act. Provision for report to council of division where person describes himself as residing.

Penalty for refusing to answer, or for giving wilfully false answers.

Power of above mentioned persons to destroy dogs under certain circumstances.

No. 40, 1889.

Dog found in custody of any person not to be destroyed if licence produced by person, or satisfies J.P. &c., that he has a fixed abode, or has paid tax in any division.

land to destroy any dog found trespassing upon the land owned or occupied by such proprietor or occupier.

227. Nothing in the last preceding section contained shall render it lawful for any of the persons therein mentioned to destroy any dog at any time when such dog shall be in the custody, charge, or possession of some person if such person shall either

- (1) Upon request under the said section produce a licence to keep such dog, or
- (2) Satisfy any such Justice of the Peace, Field-cornet, Constable, or other Officer of the Peace, that the person in whose custody, charge, or possession such dog shall be found has a fixed abode, or that a duty or tax has been at that time duly paid in any division in respect of such dog.

Nor if person in whose custody dog is found pays to collector the amount of the tax.

228. Nothing in the two hundred and twenty-sixth section of this Act contained shall render it lawful for any collector of the duty or tax on dogs to destroy any dog found in the custody, charge or possession of any person unless such person shall after demand on failure to produce a licence for such dog have refused or neglected to pay the amount of the duty or tax on such dog levied in the division within which the said collector is lawfully appointed as aforesaid, in accordance with rules and regulations framed in pursuance of the provisions of this Act.

Penalty for obstructing person exercising lawful powers under this part of this Act.

229. Any person who shall in any way hinder, prevent, obstruct, or interfere with any person duly authorised to exercise and while lawfully exercising the powers conferred by the provisions of this Act in regard to dogs, shall upon conviction be liable to the penalties prescribed in the two hundred and twenty-sixth section of this Act.

Licences are annual and expire on 31st December.

230. Every duty or tax authorised by the aforesaid Act to be levied upon dogs shall be payable annually, and every licence to keep a dog shall expire upon the 31st day of the month of December next after the issue of such licence.

Tax on dogs not levied by divisional council within limits of municipality, &c., where municipal tax exists.

231. No duty or tax on dogs shall be imposed or levied under this Act by any council within any area which shall be within the jurisdiction of any Municipality or Village Board of Management which shall already have imposed a duty or tax upon dogs: Provided that in case any Municipality or Village Board of Management shall not have imposed a tax on dogs kept within the area under its jurisdiction, it shall be lawful for the council of the division to impose and levy within such area the duty or tax authorised by this Act: and thereupon no such Municipality or Village Board of Management shall have the power to impose any such tax within the same area.

No municipal tax to be subsequently imposed if divisional council is first in imposing tax under this part of this Act.

232. All fines and penalties imposed under the provisions of this part of this Act shall, when recovered, be paid over to the council; and all costs incurred in prosecuting offences under the said Acts shall be borne by the person convicted, and the court before which such person has been tried and convicted may make the payment of costs a part of the sentence against him: Provided that in case of failure to recover such costs or any part thereof from such person, the said costs or the part not so recovered as well as any costs incurred in relation to such recovery shall be borne by such council.

Fines and penalties recovered, to be paid to the council.

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Drugs.

No. 5, 1890.]

[Aug. 22, 1890.

9. If any person selling, offering, exposing, or keeping for sale any spirits, wine, malt, or other liquor, shall have upon his premises or in his possession any vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or any extract or preparation thereof respectively, or any other poisonous or deleterious substance whatsoever, otherwise than for some innocent purpose, the proof of which shall lie on such person, he shall be liable to the penalties by the third section of this Act, and all such vitriol, coculus indicus, nux vomica, tobacco or tobacco juice, pepper, chillies, opium, aloes, salts of zinc or lead, copperas, faba amara, logwood, or such extract or preparation thereof, or any such other poisonous or deleterious substance as aforesaid shall be forfeited to the Crown and may be seized without warrant by any Justice of the Peace, Field-cornet, Police Constable, or any person authorised to carry out the provisions of this Act.

Possession by dealer of deleterious substances.

13. Such officer as shall by notice in the *Gazette* have assigned to him the general administration of this Act, or any person duly appointed by him in that behalf, any Resident Magistrate or person appointed by him in that behalf, and any Justice of the Peace, Field-cornet, or police constable may enter with or without warrant, any shop, store, or other premises, or any place or vehicle wherein he shall have reasonable grounds to suspect that any food or drugs or seeds are kept for the purpose of contravening this Act, and he may search for and demand to have delivered to him samples of any such food or drugs or seeds which he shall find therein, and on refusal or neglect to supply such samples he may seize and carry away a sufficient quantity for the purpose of investigation, and every person so refusing or resisting or declining entrance as aforesaid shall be liable to the penalties in the third section of this Act mentioned in addition to any other penalties by law provided.

Search for adulterated articles and power to obtain a sample of food or drug, or seeds

14. If any officer or authorised official as in the last section mentioned shall apply to purchase any article of food or any drug or seeds exposed for sale, or on sale in any shop, or store, or premises, place, or vehicle, and shall tender the price of the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, or authorised official as aforesaid, such person shall be liable to a penalty not exceeding ten pounds, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months unless such penalty be sooner paid.

Person refusing to sell to officer liable to a penalty.

15. The person purchasing or otherwise obtaining any article with the intention of submitting the same to analysis shall forthwith notify to the seller or his agent selling the article his intention to have the same analysed by an analyst under this Act, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent. He

Provision for dealing with samples purchased for analysis.

No. 18, 1884. shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deem it right to have the article analysed, to the analyst as aforesaid.

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Election of Members of Parliament.

No. 14, 1874.]

[July 29, 1874.]

* * * *

Polling Officer may, on reasonable grounds of suspicion that person has contravened either of the two last sections, verbally order his apprehension.

44. If any polling officer shall have reasonable and probable cause for believing that any person has, in the presence of such polling officer, committed an offence under or against either of the two last preceding sections (1) of this Act, it shall be lawful for such polling officer by verbal order to be given and acted upon before such person shall have left the polling place in which such offence, if any, shall have been committed, to authorize and require any officer of the law proper for the execution of criminal warrants, or any private person or persons, to detain in some convenient place such person so believed to have offended as aforesaid until such person shall be brought before some Resident Magistrate or Justice of the Peace to be dealt with according to law. But if such person will, whilst so detained, give bail by two sufficient sureties in twenty-five pounds each, or one such surety in fifty pounds, that he will when duly summoned appear to answer the charge against him, and that he will accept service of the summons at some place to be mentioned in the bail bond, he shall thereupon be liberated. Such bail bond as aforesaid may be entered into before the polling officer who shall have ordered his detention, or before any resident magistrate or justice of the peace.

But he may be released on bail.

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Excise (Spirits).

No. 18, 1884.]

[July 21, 1884.]

* * * *

Spirits or goods forfeited may be seized.

50. (1.) Any spirits or goods forfeited under this Act may be seized by an officer, or an officer of Customs, or by a Resident Magistrate, a Justice of the Peace, Field-cornet, Police Constable, or any Market Master.
- (2.) If any spirits or materials for making spirits shall be forfeited under this Act, all casks or other utensils containing the same shall also be forfeited.
- (3.) Where any spirits are forfeited by an Excise trader, the Chief Inspector may, if he think fit, take from the stock of such Excise trader instead of the spirits forfeited, the same quantity, proof or bulk, of any other spirits.

* * * *

(1) Making false answers and personating voters.

Explosives.

No. 4, 1887.]

ACT

[July 8, 1887.]

To make provision with respect to manufacturing, keeping, selling, carrying, and importing Explosive Substances.

WHEREAS it is expedient to make provision with respect to manufacturing, keeping, selling, carrying and importing explosive substances : Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

PRELIMINARY.

1. This Act may be cited as the Explosives Act, 1887.

Short title.

2. The term "explosive" or "explosives" in this Act—

- (1) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting-powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect ; and
- (2). Includes fuses, rockets, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

Meaning of term "explosive."

LAW RELATING TO MANUFACTURE OF EXPLOSIVES.

3. The manufacture of explosives shall not, nor shall any process of such manufacture, be carried on except at a factory for explosives licensed for the same under this Act.

Explosives to be manufactured only at factory licensed for that purpose.

Provided that nothing in this section shall apply to the making of a small quantity of explosives for the purpose of chemical experiment and not for practical use or for sale.

If any person manufactures explosives or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, he shall be deemed to manufacture explosives at an unauthorised place.

Where explosives are manufactured at an unauthorised place—

- (1) All or any part of the explosives or the ingredients thereof which may be found either in or about such place or in the possession or under the control of any person convicted under this section, may be forfeited ; and
- (2) The person so manufacturing shall be liable to a penalty not exceeding one hundred pounds a day for every day during which he so manufactures.

Penalty for manufacture at unauthorised place.

LICENSING OF FACTORIES AND MAGAZINES IN CONNECTION WITH FACTORIES FOR EXPLOSIVES.

4. A factory for explosives or magazine in connection therewith (hereinafter called a factory magazine) shall not be established except on the site and in the manner specified in a licence for the same granted under this Act.

Application for licence for factory or factory magazine.

The licence shall specify such of the following matters as are applicable, namely—

- (a) The boundaries of the land forming the site of the factory or factory magazine and either any belt of land surrounding

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- the site which is to be kept clear, and the buildings and works from which it is to be kept clear, or the distances to be maintained between the factory or factory magazine, or any part thereof, and other buildings and works; and
- (b) The situation, character, and construction of all the mounds, buildings, and works on or connected with the factory or factory magazine, and the distances thereof from each other; and
 - (c) The nature of the processes to be carried on in the factory and in each part thereof, and the place at which each process of the manufacture, and each description of work connected with the factory or factory magazine, is to be carried on, and the places therein at which explosives and any ingredients of explosives, and any articles liable to spontaneous ignition, or inflammable or otherwise dangerous, are to be kept; and
 - (d) The amount of explosives and of ingredients thereof wholly or partly mixed to be allowed at the same time in any building or machine or any process of the manufacture or within a limited distance from such building or machine, having regard to the situation and construction of such building, and to the distance thereof from any other building or any works; and
 - (e) The situation of each factory magazine, and the maximum amount of explosives to be kept in each factory magazine, and
 - (f) The maximum number of persons to be employed in each building in the factory; and
 - (g) Any special terms which the Governor may deem fit by reason of any special circumstances arising from the locality, the situation or construction of any buildings or works, or the nature of any process, or otherwise.

Application for licence and proceedings thereon.

5. Every application for a licence shall set forth fully the requirements of the applicant in regard to the matters specified in the subsections of the preceding section, and upon receipt of any application for a licence the Governor may reject the application, or cause a copy thereof to be transmitted to the local authority, who shall cause notice to be published by the applicant in manner directed by this Act of the application and of the time and place at which they will be prepared to hear the applicant, and any persons objecting to such establishment.

Upon the hearing of the application, or any adjournment thereof, the local authority may dissent altogether from the establishment of such factory or factory magazine on the proposed site, or assent thereto, either absolutely or on any conditions requiring additional restrictions or precautions.

Proceedings where site is within or within limits of the jurisdiction of urban sanitary authority or harbour authority.

6. Where the site of the proposed factory or factory magazine is situate within or within one mile of the limits of the jurisdiction of any urban sanitary authority, or of any harbour authority, the applicant shall serve on such authority, if they are not the local authority, notice of the application and of the time and place of hearing fixed by the local authority.

The said notices shall be published and served by the applicant not less than one month before the hearing.

The local authority shall fix the time and place of hearing as soon as practicable after the application made to them, and the time so fixed shall be as soon as practicable after the expiration of the said month from the publication and service of the notices by the applicant, and their final decision shall be given as soon as practicable after the expiration of the said month.

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7. Where the site of the proposed factory or factory magazine is situate partly within the jurisdiction of one local authority and partly within the jurisdiction of another, the assent of both local authorities shall be applied for in manner provided by this Act.

Assent in case site situate within jurisdiction of more than one local authority.

8. If on the hearing of the application for the establishment of a factory or factory magazine the local authority assent thereto either absolutely or on conditions submitted to by the applicant, they shall report the result to the Colonial Secretary, with the addition (if the assent was on conditions) of the additional restrictions and precautions required by those conditions.

Local authority to report to Colonial Secretary and proceedings thereon, including grant of licence.

If the local authority assent on any conditions not submitted to by the applicant, or dissent, the applicant may lodge an appeal with the Colonial Secretary, giving notice of such appeal to the local authority, and requiring them to state in writing their reasons for such conditions or dissent; and the Governor, after considering the reasons (if any) so stated, and after such inquiry, local or other, as he may think necessary, may if the local authority dissented, refuse the licence, or may in either case grant the licence applied for in or with such modifications and additions as he may consider required to meet the reasons (if any) so stated by the local authority.

9. As soon as the Governor is satisfied that the factory or factory magazine is sufficiently completed to justify the use thereof the said licence shall issue, but until then the licence shall not come into force.

Confirmation of licence.

10. The land forming the site bounded as described in the licence shall with every mound, building, and work thereon for whatever purpose, be deemed, for the purposes of this Act, to be the factory or factory magazine referred to in the licence.

Meaning of factory or factory magazine in licence.

REGULATION OF FACTORIES AND FACTORY MAGAZINES FOR EXPLOSIVES.

Regulation of factories and factory magazines for explosives.

11. In every factory and factory magazine for explosives—

- (1) The factory or factory magazine, or any part thereof, shall not be used for any purpose not in accordance with the licence; and
- (2) The terms of the licence shall be duly observed, and the manufacture or keeping or any process in or work connected with the manufacture or keeping of explosives shall not be carried on except in accordance with those terms; and
- (3) The factory or factory magazine and every part thereof shall be maintained in accordance with the licence; and any material alteration in the factory or factory magazine by enlarging or adding to the site, or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, shall not be made except in pursuance of an amended licence granted under this Act.

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In the event of any breach (by any act or default) of this section in any factory or factory magazine—

- (a) All or any part of the explosives or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and
- (b) The occupier shall be liable to a penalty not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues.

The occupier of a factory shall not be deemed guilty of a breach of this section for using in a case of emergency, or temporarily, one building or part of a building in which any process of the manufacture is, under the terms of the licence, carried on, for another process of the manufacture, if he do not carry on in such building or part more than one process at the same time, and if the quantity of explosives or ingredients thereof in such building or part do not exceed the quantity allowed to be therein, or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on: and if upon such use being continued after the lapse of twenty-eight days from the first beginning of such use he send notice of such use to the Civil Commissioner of the Division and the said Civil Commissioner do not require the discontinuance of such use.

General rules
for factories and
factory maga-
zines.

12. In every factory and factory magazine for explosives the following general rules shall be observed:—

- (1) In a factory every factory magazine shall be used only for the keeping of explosives and receptacles for or tools or implements for work connected with the keeping of such explosives; and
- (2) Every factory magazine and expense magazine in a factory shall have attached thereto a sufficient lightning conductor, unless by reason of the construction by excavation or the position of such magazine or building, or otherwise, the Colonial Secretary considers a conductor unnecessary, and every danger building in a factory shall, if so required by the Colonial Secretary, have attached thereto a sufficient lightning conductor; and
- (3) Charcoal, whether ground or otherwise, and oiled cotton, oiled rags, and oiled waste, and any articles whatever liable to spontaneous ignition, shall not be taken into any danger building, except for the purpose of immediate supply and work or immediate use in such building, and upon the cessation of such work or use shall be forthwith removed; and
- (4) There shall be constantly kept affixed in every danger building, either outside or inside, in such manner as to be easily read, a statement of the quantities of explosives or ingredients allowed to be in the building, and a copy of these rules, and of any other part of this Act required by the Colonial Secretary to be affixed, and of such part of the licence and special rules made under this Act as apply to

the building; and with the addition in a factory of the name of the building, or words indicating the purpose for which it is used; and

- (5) All tools and implements used in any repairs to or in a danger building shall be made of safe and suitable material; and
- (6) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into any danger building of fire, lucifer matches, or any substance or article likely to cause explosion or fire, but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (7) No person shall smoke in any part of the factory or factory magazine, except in such part (if any) as may be allowed by the special rules; and
- (8) Any carriage, boat, or other receptacle in which explosives, or the wholly or partly mixed ingredients thereof, are conveyed from one building to another in a factory or factory magazine, or from any such building to any place outside of such factory or factory magazine, shall be safely and suitably constructed and shall contain only the explosives and ingredients, and shall be closed or otherwise properly covered over: and the explosives and ingredients shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition; and
- (9) A person under the age of sixteen years shall not be employed in or enter any danger building, except in the presence and under the supervision of some grown-up person; and
- (10) In a factory the ingredients in course of manufacture shall be removed with all due diligence from each working building so soon as the process connected with those ingredients which is carried on in such building is completed, and all finished explosives shall with all due diligence either be removed to a factory magazine, or sent away immediately from the factory, and such ingredients and explosives shall be loaded and unloaded with all due diligence; and
- (11) In a factory all ingredients to be made or mixed into explosives shall, before being so made or mixed, be carefully sifted, for the purpose of removing therefrom, as far as practicable, all dangerous foreign matter.

The Governor may, from time to time make, and when made rescind and alter, such other general rules as may appear to him to be necessary.

In the event of any breach (by any act or default) of the general rules in any factory or factory magazine,—

- (a) All or any part of the explosives or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and
- (b) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence)

Governor may make rules as to factories or factory magazines.

Penalty for breach of rules.

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ten pounds for every day during which such breach continues.

Alteration of terms of licence and alterations in factories and factory magazines.

13. Where the occupier of any factory or factory magazine for explosives desires that any alteration should be made in the terms of his licence, or any material alteration made in the factory or factory magazine by enlarging or adding to the site or by externally enlarging or adding to any building, or by altering otherwise than by enlargement, or by making any new work, he may apply for an amending licence.

If he satisfy the Colonial Secretary that the alteration may be properly permitted, having regard to the safety of the persons employed in the factory or factory magazine, and will not materially either increase the danger to the public from fire or explosion, or diminish the distance of any danger building in the factory or factory magazine from any building or work outside and in the neighbourhood of the factory or factory magazine, or increase the amount of explosives allowed to be kept in the factory magazine, or in any building in such magazine, the Colonial Secretary may grant the amending licence of his own authority, but, save as aforesaid, the provisions of this Act with respect to the application for and grant of a new licence shall apply to such amending licence.

Devolution and determination of licence.

14. A factory or factory magazine licence shall not be avoided by any change in the occupier of the factory or factory magazine; but notice of the name, address, and calling of the new occupier shall be sent to the Colonial Secretary within one month after the change, and in default such new occupier shall be liable to a penalty not exceeding twenty shillings for every week during which such default continues.

A factory or factory magazine licence may be revoked by the Governor and such licence shall be determined by a discontinuance of the business carried on in pursuance of any such licence if such discontinuance continues for a period of , or if the factory or factory magazine is used for any purpose not authorised by the licence.

Occupiers of factories and factory magazines to take due precautions.

15. The occupier of every factory, and factory magazine for explosives, and every person employed in or about the same, shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorised persons having access to the factory, or factory magazine, or to the explosives therein and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in such factory or factory magazine.

Any breach (by any act or default) of this section in any factory, or factory magazine, shall be deemed to be a breach of the general rules applying thereto.

LICENSING OF OTHER MAGAZINES OR STORES FOR KEEPING EXPLOSIVES.

Licensing of magazines or stores, other than factories or factory magazines, for keeping explosives.

16. Explosives shall not be kept at any place except as follows; that is to say,

- (1) Except in the factory licensed for the same under this Act in which they are manufactured; or
- (2) Except in any magazine or store now licensed for the storage of gunpowder, or any other magazine or store for explosives for the keeping of which the Colonial Secretary shall have

issued a licence to be renewed or otherwise dealt with at his discretion on the 1st day of January in each year.

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Provided that this section shall not apply—

- (1) To gunpowder or blasting powder, percussion caps, or ammunition of any description, or to any other explosive regarding the keeping of which provision is now made by law, the intent of this section being not to interfere with the existing law in that behalf.
- (2) To fuses ordinarily known as "safety fuses," or to detonators in case the detonators do not exceed in number ten thousand.
- (3) To a person keeping for his private use and not for sale explosives other than those in the preceding sub-section of the proviso mentioned to an amount not exceeding on the same premises five pounds; or
- (4) To the keeping of any explosives by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of explosives.

Any explosives kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorised place.

Penalty for keeping explosives in unauthorised place.

Where any explosive is kept in an unauthorised place—

- (1) All or any part of the explosives found in such place may be forfeited; and
- (2) The occupier of such place, and also the owner of, or other person guilty of keeping the explosives, shall each be liable to a penalty not exceeding two shillings for every pound so kept.

SALE OF EXPLOSIVES.

17. Explosives shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place.

Sale of explosives not allowed in public places or to children.

If any explosive is hawked, sold, or exposed for sale in contravention of this section—

- (1) The person hawking, selling, or exposing for sale the same shall be liable to a penalty not exceeding forty shillings; and
- (2) All or any part of the explosive which is so hawked or exposed for sale, or is found in the possession of any person convicted under this section may be forfeited.

Penalty.

Explosives shall not be sold to any child apparently under the age of thirteen years; and any person selling explosives in contravention of this section shall be liable to a penalty not exceeding five pounds.

CONVEYANCE OF EXPLOSIVES.

18. The following general rules shall be observed with respect to the packing of explosives for conveyance:

Conveyance of Explosives and general rules as to packing for conveyance.

- (1) The explosives, if not exceeding five pounds in amount, shall be contained in a substantial case, box, or other receptacle, made and closed; and

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- (2) The explosives, if exceeding five pounds in amount, shall be contained either in a single package or a double package. A single package shall be a box, barrel, or case of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed. If the explosive is packed in a double package the inner package shall be a substantial case, or other receptacle made and closed, and the outer package shall be a box, barrel, or case of wood or metal or other solid material, and shall be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed; and
- (3) Every package, whether single or double, when actually used for the package of explosives, shall not be used for any other purpose; and
- (4) On every package there shall be affixed the word "explosives," together with the name of the explosive, in conspicuous characters by means of a brand or securely attached label or other mark.

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In the event of any breach (by any act or default) of any general rule in this section, the explosives in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

Rules may be made by Governor.

The Governor may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section.

Bye-laws by harbour authority as to conveyance, loading, &c., of explosives.

19. Every harbour authority shall, with the sanction of the Governor, make bye-laws for regulating the conveyance, loading, and unloading of explosives within the jurisdiction of the said authority, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said authority; namely,

- (1) Determining the notice to be given by ships and boats conveying, loading, or unloading explosives as merchandise within the said jurisdiction; and
- (2) Regulating the navigation and place of mooring of such ships and boats; and
- (3) Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping explosives on board any such ship or boat, and of giving notice by brands, labels, or otherwise, of the nature of the package containing the explosives; and
- (4) Regulating the description, construction, fitting up, and licensing of the ships, boats, or carriages to be used for the conveyance of explosives, and the licensing and dress of the persons having charge thereof; and
- (5) Prohibiting in cases where the loading or unloading of explosives within the jurisdiction of such authority appears to be specially dangerous to the public such loading or unloading, and fixing the places and times at which the explosives are to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat, or carriage; and

- (6) Regulating the mode of and the precautions to be observed in conveying any explosives, and in the loading or unloading any ship, boat, or carriage conveying explosives as merchandise, and the time during which explosives may be kept during such conveyance, loading, or unloading; and
- (7) Fixing the times at which lights or fires are to be allowed or not allowed on board such ships or boats, as before mentioned, or at which a constable or officer of the harbour authority is to be on board them; and
- (8) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just according to the gravity of the offence, and according as it may be a first or second or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the explosives in respect of which, or found in the ship, boat or carriage in respect of which, the breach of bye-law has taken place.

Penalties for breach of bye-laws made by harbour authorities.

In the event of any breach of a bye-law under this section in the case of any ship, boat, carriage, or explosives whether there has or has not been any conviction for such breach, it shall be lawful for the harbour-master, or other officer named in the bye-laws, or any person acting under the orders of the harbour authority, to cause such ship, boat, carriage, or explosive, at the expense of the owner thereof, to be removed to such place or otherwise dealt with in such manner as may be in conformity with the bye-laws, and all expenses incurred in such removal may be recovered in the same manner as a penalty under this section, and any person resisting such harbour-master or officer or other person in such removal shall be liable to the same penalties as a person is liable to for obstructing the harbour-master in the execution of his duty.

On any part of the coast or in any tidal water for which there is no harbour authority, the Governor may make bye-laws under this section for that part or water as if it were a harbour and by such bye-laws define the area within which such bye-laws are to be observed, and the authorities and officers by whom such bye-laws are to be enforced and carried into effect within such area, and every such authority and officer shall for the purposes of this Act, other than making bye-laws or assenting to a site for a new factory or magazine, have the same power within the said area as a harbour authority and an officer of a harbour authority have respectively under this Act in a harbour.

Bye-laws made by Governor where no harbour authority.

20. The Governor may in case of the Government railways, and, in the case of other railways, the railway company or body or the person owning such railway may with the sanction of the Governor make bye-laws for regulating the conveyance, loading, and unloading of explosives on the railway and in particular for declaring and regulating all or any of the following matters in the case of such railway; that is to say:

Bye-laws as to conveyance, loading, &c., of explosives in case of Government and other railways.

- (1) Determining the notice to be given of the intention to send explosives for conveyance as merchandise on the railway, and

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- (2) Regulating, subject to the general rules with respect to packing in this Act contained the mode of stowing and keeping explosives for conveyance and of giving notice by brands, labels, or otherwise of the nature of the package containing the explosives, and
- (3) Regulating the description and construction of carriages to be used in the conveyance of explosives; and
- (4) Prohibiting or subjecting to conditions and restrictions the conveyance of explosives with any articles or substances, or in passenger trains, carriages, ships, or boats; and
- (5) Fixing the places and times at which the explosive is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time, and
- (6) Determining the precautions to be observed in conveying explosives and in loading and unloading the carriages used in such conveyance, and
- (7) Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

Such bye-laws, when confirmed by the Governor, shall apply to the railway, agents, and servants of the company making the same, and to the persons using such railway or the premises connected therewith and occupied by or under the control of such company.

Penalties for
breach of rail-
way bye-laws.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the explosive in respect of which, or being in the carriage or train of carriages in respect of which, the breach of bye-law has taken place.

Bye-laws as to
conveyance,
loading, &c.,
explosives in
other cases.

21. The Governor may from time to time make, and when made, rescind, alter, or add to, bye-laws for regulating the conveyance, loading, and unloading of explosives in any case in which bye-laws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters; that is to say,

- (1) Regulating the description and construction of carriages to be used in the conveyance of explosives as merchandise; and
- (2) Prohibiting or subjecting to conditions and restrictions the conveyance of any explosive with any articles or substances, or in passenger carriages; and
- (3) Fixing the places and times at which the explosive is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and
- (4) Determining the precautions to be observed in conveying explosives, and in loading and unloading the carriages used in such conveyance, and the time during which the explosives may be kept during such conveyance, loading and unloading; and
- (5) Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger; and

- (6) Adapting, on good cause being shown, the bye-laws in force under this section to the circumstances of any particular locality.

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The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the explosives in respect of which, or being in the carriage in respect of which, the breach of bye-law has taken place.

Penalties for breach of bye-laws made under this section.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term carriage.

22. With respect to the importation from any place out of the Colony of any explosive (other than gunpowder, cartridges made with gunpowder, percussion caps, fireworks, and any explosive prescribed by the Governor by Proclamation), the following provisions shall have effect; that is to say,

Provisions relating to importation of explosives.

- (a) The owner and master of any ship having on board any such explosive shall not permit the same to be unloaded and delivered to any person who does not hold a licence from the local authority to import such explosive.
- (b) Such licence shall be granted by the local authority to any person owning or in occupation of a magazine for the receipt of such explosives, whether duty paid or in bond.
- (c) The licence shall bind the person licensed to comply with the regulations of the local authority or authorities.
- (d) The holder of such licence may cause to be landed, transhipped, or delivered on arrival all explosives consigned to him in any vessel, provided he immediately give notice to the local authority of the quantities and descriptions of such explosives and the place where they are to be stored, transhipped, or delivered.
- (e) Should any case or package containing such explosives be found on the vessels breaking bulk to be leaky or in any way damaged, such case or package shall not be landed until due authority be obtained by the master of the vessel from the harbour or other local authority.
- (f) In the event of such explosives arriving consigned to unlicensed persons, such person or persons shall not be allowed to receive, land, or in any way dispose of, the said explosives, until they shall have taken out a licence and in all respects complied and engaged to comply with the regulations of the local authority.
- (g) Customs officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article on the importation of which restrictions are for the time being imposed by the law relating to the Customs, and the ship

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containing the same, and the enactments for the time being in force relating to the Customs or any such article or ship shall apply accordingly.

SPECIALLY DANGEROUS EXPLOSIVES.

Prohibition of specially dangerous explosives by proclamation.

23. Notwithstanding anything in this Act the Governor may, from time to time, by Proclamation to be published in the *Gazette*, prohibit, either absolutely, or except in pursuance of a licence of the Colonial Secretary, or may subject to conditions or restrictions the manufacture, keeping, importation from any place out of the Colony, conveyance, and sale, or any of them, of any explosive which is of so dangerous a character, that, in the judgment of the Governor, it is expedient for the public safety to issue such Proclamation;

Penalty for contravention of Proclamation.

Any explosive manufactured or kept in contravention of any such Proclamation shall be deemed to be manufactured or kept, as the case may be, in an unauthorised place.

Any explosive conveyed in contravention of any such Proclamation shall be deemed to be conveyed in contravention of a bye-law made under this Act with respect to the conveyance of explosives.

If any explosive is imported or sold in contravention of any such Proclamation,—

- (1) All or any part of such explosive may be forfeited; and
- (2) The owner or master of the ship in which it was imported shall be liable to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship; and
- (3) The person to whom it was delivered and the person selling the same shall be liable to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold or found in his possession.

Powers of Customs Officers.

Customs officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article prohibited to be imported by the law relating to the Customs, and the ship containing the same, and the enactments for the time being in force relating to the Customs, and any such article or ship shall apply accordingly.

PROVISIONS IN FAVOUR OF CERTAIN MANUFACTURERS AND DEALERS.

Provision in favour of makers of new explosives for experiment.

24. The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to the one specified in his licence, shall not be deemed to have manufactured the same in an unauthorised place if he manufacture the same on a small scale, and exclusively for the purpose of trial and not for sale, and he send notice of the same, as soon as he has manufactured it, to the Colonial Secretary, and if he observe the provisions of this Act, so far as they are applicable.

Provision in favour of gun-makers, &c.

25. No gunmaker, gun or ammunition merchant or occupier of a magazine, or store, for any explosive shall be required by this Act to take out a factory licence by reason that in connexion with his magazine, or business premises or store, he fills for sale or otherwise any cartridge for small arms with the said explosive, so that he observe the following regulations; namely,

- (1) There shall not be in the room in which such filling is being

carried on more than ten pounds of gunpowder, (or the prescribed amount of any other explosive, except it is made up into safety cartridges; and

- (2) Any work unconnected with the making of the cartridges being of a dangerous nature shall not be carried on in the room while such filling is being carried on; and
- (3) There shall not be in the room while such filling is being carried on any fire nor any artificial light, except a light of such construction, position, or character as not to cause any danger of fire or explosion; and
- (4) In the case of a magazine or store, the room in which the filling is carried on shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the licence, and in the case of a store by any Proclamation relating to stores; and
- (5) The occupier shall give notice in the case of a magazine to the Colonial Secretary, and in the case of a store or business premises to the local authority that he intends to carry on such filling of cartridges as is allowed by this section.

The regulations in this section and any conditions so made by the Colonial Secretary as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine, store, and business premises respectively, and the breach of them shall be punished accordingly.

26. The occupier of any magazine or store for any explosive shall not be required by this Act to take out a factory licence by reason that, in connection with such magazine or store, he, by filling cartridges, making charges, drying, shifting, fitting, or otherwise, adapts or prepares the said explosive for use exclusively in his mine or quarry, or in some excavation or work carried on by him or under his control, so that he observes the following regulations; namely,

Provision in
favour of owners
of mines, quar-
ries, &c

- (1) There shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder, or the prescribed amount of any other explosive; and
- (2) Any work unconnected with such adaptation or preparation shall not be carried on in the said workshop while such adaptation or preparation is being carried on; and
- (3) The said workshop shall be detached from the magazine or store, but in the immediate neighbourhood thereof.
- (4) The occupier shall give notice in the case of a magazine to the Colonial Secretary, and in the case of a store to the local authority, that he intends to carry on such adaptation or preparation as is allowed by this section.

27. A firework factory shall not be deemed to be a factory for explosives for the purposes of this Act if there is not upon the same factory at the same time—

Provision in
favour of small
firework manu-
facturers.

- (a) More than one hundred pounds of any explosive other than manufactured fireworks and coloured fires and stars; or
- (b) More than five hundred pounds of manufactured fireworks, either finished or partly finished; or

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- (c) More than twenty-five pounds of coloured fires or stars not made up into manufactured fireworks.

The occupier of such firework factory or of any place for storing or keeping fireworks not exceeding the above limit, shall not be subject to this Act.

Powers of Civil Commissioner or other officer regarding inspection, &c.

28. The Civil Commissioner of the division or any officer authorised by him shall have power to make such examination and enquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose,—

- (1) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act and all matters and things relating to the safety of the public or of the persons employed in or about such factory, magazine, or store; and
- (2) He may enter, inspect, and examine any premises and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day; and
- (3) He may require the occupier of any factory, magazine, store, or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosive or ingredients of an explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which he believes to be an explosive, or such ingredients or substance.

The occupier of every such factory, magazine, store, and premises, his agents and servants, shall furnish the means required for every such entry, inspection, examination, and enquiry.

Penalty for preventing exercise of powers.

Any person who fails to permit such Civil Commissioner or officer to enter, inspect, examine, or make enquiries in pursuance of this section, or to comply with any requisition in pursuance of this section, or who in any manner obstructs such Civil Commissioner or officer in the execution of his duties under this Act, shall be liable to a penalty not exceeding one hundred pounds for each offence.

LOCAL SUPERVISION.

DEFINITION AND POWERS OF LOCAL AUTHORITY.

Definition of local authority.

29. The local authority, for the purposes of this Act, shall be—

- (1) In any municipality or borough the Town Council or Commissioners;
- (2) In any village under management, the Board of Management;
- (3) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority; and

- (4) In any place in which there is no local authority as before in this section defined, the Divisional Council. No. 4, 1887.

GENERAL POWER OF SEARCH.

30. Where any of the following officers,—namely, any Justice of the Peace, Field-cornet, or any constable or any officer of the local authority, if such constable or officer is specially authorised either (a) by a warrant of a Justice of the Peace (which warrant such Justice may grant upon reasonable ground being assigned on oath), or (b) (where it appears to a Commissioner or other officer of police of equal or superior rank, that the case is one of emergency, and that the delay in obtaining a warrant would be likely to endanger life), by a written order from such Commissioner or officer,—has reasonable cause to believe that any offence has been or is being committed with respect to an explosive in any place (whether a building or not, or a carriage, boat, or ship), or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may enter at any time, and if needs be by force, and as well on Sunday as on other days, the said place, and every part thereof, and examine the same, and search for explosives therein, and take samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein.

Any person who, by himself or by others, fails to admit into any place occupied by or under the control of such person any officer demanding to enter in pursuance of this section, or in any way obstructs such officer in the execution of his duty under this section, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place.

Where a constable or officer of the local authority specially authorised by written authority other than a warrant of a Justice of the Peace, enters and searches as above provided, a special report in writing of every act done by such constable or officer in pursuance of that authority, and of the ground on which it is done, shall be forthwith sent by the person by whom or under whose authority it was done to the Civil Commissioner of the division.

31. Where any of the following officers, namely, any Justice of the Peace, Field-cornet, or any constable, or any officer of the local authority, has reasonable cause to believe that any explosive or ingredient of an explosive or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some court has determined whether the same is or is not so liable to be forfeited, and with respect thereto the following provisions shall have effect:

- (1) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat, or ship) to detain the same in such place or in any place under the control of such occupier, or may remove it in such manner and to such place as will in his opinion least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent

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and fraught with serious public danger, and he is authorised by an order from the Colonial Secretary, cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive, or having the same under his control at the time of the seizure; and any such occupier who, by himself or by others, fails to keep the same when he is required in pursuance of this section to detain it, and any such occupier or other person who, except with the authority of the officer seizing the same, or in case of emergency for the purpose of preventing explosion of fire, removes, alters, or in any way tampers or deals with the same while so detained, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place :

- (2) The proceedings before a court for determining whether the same is or is not liable to forfeiture shall be commenced as soon as practicable after the seizure; and
- (3) The receptacles containing the same may be seized, detained, and removed in like manner as the contents thereof; and
- (4) The officer seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts, and accoutrements, belonging to or drawing or provided for drawing such ship, boat, or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined in case of dispute, by the Civil Commissioner, and to be recovered in like manner as penalties under this Act; and
- (5) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident, but the person seizing, removing, detaining, keeping, or conveying the same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages, for keeping or conveying the same, so that he use all such due precautions as aforesaid; and
- (6) The officer seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without reasonable cause, or that he caused damage to the article seized by some wilful neglect or default.

Inspection of
wharf, carriage,
boat, &c., with
explosives in
transitu.

32. Any of the following officers, namely, any Justice of the Peace, Field-cornet, or any officer of police, and any officer appointed by the local authority, may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect,

and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory, magazine, or store or of the importer of any explosive, on or in which wharf, carriage, ship, or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier, or importer.

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Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive, as if it were liable to forfeiture.

Seizure for offence against this Act.

Any officer above mentioned in this section, who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop, and enter, inspect, and examine, such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger, in like manner as if such explosive were liable to forfeiture.

Special power of officer in cases of emergency.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorised by a search warrant, and any person failing to admit or obstructing such officer shall be liable to the same penalty.

LEGAL PROCEEDINGS.

33. Where any offence under this Act for which the occupier of any factory, magazine, store, or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Exemption of occupier from penalty upon proof of another being real offender.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Where any officer of the law or an officer of the local authority, is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceeding were instituted against him, would under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power proceeding against and convicting the person whom the inspector, officer, or local authority believes actually to have committed the offence, the inspector, officer or local authority shall proceed against that person in the first instance, without first proceeding against the occupier.

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Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner, or master were such an occupier as above in this section mentioned.

Exemption of carrier and owner and master of ship where other person is in fault.

34. Where a carrier or owner or master of a ship or boat is prevented from complying with this Act, by the wilful act, neglect, or default of the consignor or consignee of the explosive, or other person or by the improper refusal of the consignee or other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Supplemental provisions as to forfeiture of explosive.

35. Where a court before whom a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other penalty or punishment, a penalty not exceeding such sum as appears to the court to be the value of the explosive so liable to be forfeited.

Where any explosive, or ingredient of an explosive, is alleged to be liable under this Act to be forfeited, any indictment, information, or complaint may be laid against the owner of such explosive or ingredient, for the purpose only of enforcing such forfeiture, and where the owner is unknown, or cannot be found, a court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such explosive will be forfeited, and at such time and place the court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

36. For all the purposes of the Act—

Definition of harbour and tidal waters.

- (1) Any harbour, tidal water, or inland water which runs between or abuts on or forms the boundary of the jurisdiction of two or more divisions shall be deemed to be wholly within the jurisdiction of each of such courts; and
- (2) Any tidal water not included in the foregoing descriptions, and within the territorial jurisdiction of and adjacent to or surrounding any part of the shore of the Colony, and any pier, jetty, mole, or work extending into the same, shall be deemed to form part of the shore to which such water or part of the sea is adjacent, or which it surrounds.

Prosecution of offences.

37. Every offence under this Act may be prosecuted and every penalty under this Act may be recovered, and all explosives and ingredients liable to be forfeited under this Act may be forfeited either on indictment or before a Court of Resident Magistrate.

Provided that the penalty imposed by a Court or Resident Magistrate shall not exceed one hundred pounds exclusive of costs, and exclusive of any forfeiture or penalty in lieu of forfeiture, and the term of imprisonment imposed by any such court shall not exceed one month.

38. Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to such ship or boat, the court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.

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Ship may be seized by distress.

39. Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of, in such manner as the court declaring the forfeiture or the Colonial Secretary may direct.

Provisions regarding disposal of forfeited explosives.

The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

The provisions of this Act with respect to an explosive, or ingredient of an explosive, seized in pursuance of this Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

The court declaring the forfeiture, or the Colonial Secretary directing the sale or other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage, containing such explosive or ingredient for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same, to be determined in case of dispute by the Civil Commissioner of the division; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explosive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some or one of them, shall destroy the same accordingly, and if the court or Colonial Secretary so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the Colonial Secretary is satisfied that default has been made in complying with any such direction by him or by a court, and that the detention of the ship, boat, or carriage will not secure the safety of the public and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage, in like manner as if it were a receptacle for an explosive forfeited under this Act, the Colonial Secretary may direct such ship, boat, and carriage, or any of them, to be, and the same may accordingly be, so used or dealt with.

EXEMPTIONS AND SAVINGS.

40. This Act shall not apply—

- (1) To any factory, magazine, store, premises, wharf, place, or explosive under the control of a department of the Government or otherwise held for the service of the Crown, or to the manufacture, keeping, or importation of such explosive; or
- (2) To any of Her Majesty's ships, boats, or carriages; or
- (3) To the keeping or making up, or adapting for use of any explosive issued by or by the authority of, the Governor for

What factories, &c., exempt from provisions of this Act.

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the use of any volunteer corps or administrative regiment; or

- (4) To the conveyance of any explosive under the control of the Governor, or to the conveyance of any explosive otherwise held for the service of the Crown :

Provided that every person who enters without permission or otherwise trespasses upon any fortification, battery, factory, magazine, or storehouse or the land immediately adjoining thereto in the occupation of the Crown or a department of the Government, or if it adjoin such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such fortification, battery, factory, magazine, or storehouse, shall be liable to the like penalty, and may be removed and arrested in like manner as if this section had not been enacted and this Act applied to such fortification, battery, factory, magazine, or storehouse, as above in this section mentioned.

This Act not to apply to keeping of rockets for certain purposes.

41. This Act shall not apply—

- (1) To the keeping of any rockets for use in any apparatus for saving life; or
(2) To the keeping of any explosive kept for the purpose of signalling at or near a station on the sea coast.

Nor to ship-master, &c., in certain cases.

42. Nothing in this Act shall render liable to any penalty or forfeiture the owner or master of any ship or boat, or any carrier or warehouseman, or the person having charge of any carriage, for any act done in breach of this Act, if he prove that by reason of stress of weather, inevitable accident, or other emergency, the doing of such act was, under the circumstances, necessary and proper.

This Act not to exempt from liability to civil action.

43. This Act shall not, save as is herein expressly provided, exempt any person from any action or suit in respect of any nuisance, tort, or otherwise, which might, but for the provisions of this Act, have been brought against him.

Nor to derogate from powers otherwise conferred.

44. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament.

DEFINITIONS.

Governor may declare substance to be an explosive under this Act.

45. The Governor may, by Proclamation declare that any substance which appears to him to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the Proclamation) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

Who to be deemed a manufacturer of explosives.

46. Any person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, or the process of re-making, altering, or repairing any explosive, shall be subject to the provisions of this Act as if he manufactured an explosive, and the expression "manufacture" shall in this Act be construed accordingly.

No. 33, 1883.]

ACT

[September 27, 1883.]

To Provide for the Holding of Inquests in cases of Fire.

WHEREAS it is expedient to make provision for conducting investigations and holding inquests in cases of Fire: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof as follows:—

Preamble.

1. In the interpretation of this Act, unless repugnant to the context, "Inquest" or "Fire Inquest" shall mean an inquest or enquiry under the provisions of this Act. Interpretation clause.
 "Magistrate" shall mean any Resident Magistrate or Justice of the Peace.

2. If any fire shall occur whereby any house or building or any property shall be destroyed or injured, and such information shall be given as to satisfy any Magistrate that there are reasonable grounds for believing that such fire originated under suspicious circumstances, an inquest shall be held. Inquest in case of fire under suspicious circumstances.

3. Any Magistrate receiving such information as in the last preceding section mentioned shall, without unnecessary delay, proceed to the spot where the fire occurred, and shall make an inquest as to the cause or origin of such fire, and as to the nature or extent of the damage and injury which it has occasioned. Magistrate to proceed to place of fire and hold inquest.

4. For the purpose of making such inquest, the Magistrate shall summon and bring before him all such persons as he may think necessary, and whom he deems capable of giving information or evidence concerning such fire, and shall examine such persons on oath, and shall reduce their examinations to writing. May summon anyone to give evidence.

5. If any person summoned as a witness shall not attend pursuant to such summons, then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by the Magistrate issuing such summons such sum, not exceeding ten pounds, as such Magistrate shall think fit, and such Magistrate may issue his warrant for the apprehension of such person so making default. Penalty for non-attendance of witnesses.

6. The Magistrate presiding at any inquest shall administer to the persons appearing to give evidence such oaths or other solemn forms as *mutatis mutandis* are in use in criminal cases; and the forms of summonses and of warrants of apprehension set forth in the Schedule to this Act shall, as near as may be, be used in all matters to which such forms refer. Oaths to be administered.

7. All contempts committed by witnesses or others before or in regard to any inquest, shall be dealt with in like manner, *mutatis mutandis*, as contempts committed by witnesses and others before any Resident Magistrate's Court. Contempts.

8. Nothing in this Act contained shall prevent any person authorised by law to issue warrants of apprehension or authorised to apprehend offenders or supposed offenders from acting in all respects as regards such warrants or such offenders, whether an inquest shall or shall not have been commenced, precisely as if this Act had not been passed. Power to issue warrant of apprehension.

9. All witnesses summoned or attending to give evidence before Witnesses' Expenses,

No. 33, 1883.

Magistrate
may commit
suspected person
for trial.

Reports of in-
quests, &c., to
be transmitted
to Attorney-
General.

How expenses
of inquests be
paid.

Magistrate
may require de-
posit from per-
son demand-
ing inquest.

In actions on
policies of insur-
ance failing for
fraud, &c., costs
of inquest may
be given against
the plaintiff.

Short Title

any fire inquest shall be entitled to receive their expenses as if summoned to give evidence at a criminal trial or preparatory examination.

10. If the Magistrate upon any such inquest shall see reason to believe that any crime or offence has been committed in connection with such fire by any person who can be made amenable to justice, the Magistrate shall cause such person to be apprehended in order that a preparatory examination may be instituted against him.

11. At the close of such inquest the Magistrate shall report in writing to the Attorney-General, or in the districts over which the Court of the Eastern Districts or the High Court of Griqualand exercises jurisdiction, to the Solicitor-General or Crown Prosecutor, as the case may be, as to the cause or origin of the said fire, whether in his opinion it was kindled by design or was the result of accident or negligence, stating the full particulars of the case and the conclusions at which he shall in regard to it have arrived.

12. In case upon any such inquest it shall appear that there were reasonable or probable grounds for suspecting or believing that the fire originated under such circumstances as to tend to the inference that it was wilfully or criminally occasioned the expense of the inquest shall be paid by the public Treasury; if otherwise such expense shall be paid by the person requiring or demanding the holding of the inquest.

The certificate of the Attorney-General, Solicitor-General or Crown Prosecutor, as the case may be, as to the liability for the payment of such expense by the Treasury or by any such person shall be final and conclusive.

13. Any Magistrate called upon to hold an inquest may require the person demanding the same to deposit a sum of money or to enter into a recognizance with or without sureties for the due payment of the expense of holding such inquest in case such person shall thereafter be required to pay such expenses.

14. In case any action shall be brought upon or in respect of any policy of insurance against risk of fire, and the court before which such action is tried shall determine that the plaintiff is not entitled to recover upon such policy by reason of fraud or other sufficient ground, it shall be competent for such court if it shall see fit to order that the expenses incurred in the holding of any inquest into the origin or cause of the fire (if such inquest shall have been held), shall be deemed and taken to be part of the costs to be paid by the plaintiff against whom costs shall have been adjudged.

15. This Act may be cited as the "Fire Inquests Act, 1883."

SCHEDULE.

No. 33, 1883.

Form of Process for Summoning Witnesses.

Fire inquest for the District of _____.

To _____ (name of the constable or person to whom the process is directed). You are hereby required in Her Majesty's name to summon _____ A. B. (describe him particularly) that he appear before me at _____, on the _____ day of _____,

18—, at the hour of — in the ^{fore} } noon (as the case may be),
 _{after}

then and there to be examined at an inquest concerning a fire which occurred at _____ on _____ (state the place and time). Therein fail not at your peril.

Dated at _____, this _____ day of _____, 18—.

Resident Magistrate or Justice of the Peace.

Form of Warrant for Apprehension of a Defaulting Witness.

Fire Inquest for the District of _____.

To _____ (name of person to whom the process is directed), and constables and other officers of the law proper to the execution of criminal warrants.

Whereas A. B., of _____ (describe him particularly as in the summons) who was duly summoned to appear before me at _____ (name the place as in the summons) then and there to be examined at an Inquest concerning a Fire which occurred at _____, on _____ (stating the place and time), hath refused or neglected so to do to the great delay and hindrance of justice, there are therefore in Her Majesty's name to command you to apprehend and bring before me the body of the said A. B., that he be dealt with according to law: and for so doing this shall be your warrant.

Dated at _____, this _____ day of _____, 18—.

Resident Magistrate or Justice of the Peace.

Forests.

No. 28, 1888.]

[Aug 21, 1888.

30. It shall be lawful for, and it shall be the duty of every Magistrate, Justice of the Peace, Field-cornet, police, forest or other officer, or other person specially authorised to demand, as often as may be necessary, the production of the authority or licence for any act done or committed within any forest subject to the provisions of this Act; and in the event of such authority not being produced, then and there to restrain from further acts.

Production of
authority for
any Act done
within any
forest.

39. Any person found within any Crown forest, or on any road in its vicinity, and having in his possession any tree or part of a tree, who, on being thereunto required by any Conservator, or other officer under this Act, refuses to give a satisfactory account of the manner in which he became possessed of any such tree or part of a tree, may

Person in pos-
session of any
part of tree in
or near Crown
forest, liable to
interrogation by
forest officer;
and unless pos-

No. 81, 1830.
 session proved
 lawful liable to
 fine of five
 pounds.

be taken by the party interrogating him before any Justice of the Peace; and if such person does not satisfy such Justice that he came lawfully by the said tree or part of a tree, he may be taken before the Resident Magistrate, and shall, on conviction, forfeit any sum not exceeding five pounds.

* * * * *

Game Law.

No 36, 1886.]

[July 6, 1886.

* * * * *

Penalty for
 taking away,
 &c., eggs of
 game birds, or
 for selling or
 purchasing the
 same.

Governor may
 grant permit to
 take young
 birds, eggs, &c.,
 for certain pur-
 poses.

Number and
 denomination of
 birds, eggs, &c.,
 to be stated in
 permit.

Any one ex-
 ceeding terms of
 permit guilty of
 contravention,
 &c.

6. No person shall, without special permission of the Governor, for purposes to be mentioned in such permission as hereinafter is provided, at any time wilfully take away, disturb or destroy eggs, or sell, hawk, or expose for sale, or shall purchase eggs of any game birds in any part of this Colony, under the penalty of any sum not exceeding four pounds sterling for the first offence, and not less than eight pounds sterling, nor exceeding ten pounds sterling for every subsequent offence; and the said eggs shall be confiscated to Government in whose custody soever the same may at any time be found and may be seized *brevis manu* by any landowner, occupier of land, Justice of the Peace, Field-cornet, constable, or police officer: Provided, always, that it shall be lawful for the Governor to permit under his hand any fit or proper person or persons to take, or carry away the eggs of any game bird, or the young of any game, whether bird or other game, for the purpose of rearing or breeding the same, or for the purpose of acclimatization or scientific investigation; and any person so obtaining the Governor's written permission as aforesaid may himself obtain or take the said eggs, birds, or animals: Provided, always, that such writing shall distinctly state the number and denomination of such eggs, birds, or animals which the holders are employed to obtain or take, which shall collectively not exceed the number specified by the Governor's permission aforesaid. And any person obtaining or taking a greater number or other kinds of such eggs, birds, or animals than those specified in the Governor's permission as aforesaid, or giving or affecting to give any person or persons authority to take or obtain, together with what he shall himself take or obtain in the whole, more than the number or other than the kinds specified in such permission as aforesaid, shall be held guilty of wilfully taking all such young or eggs as he shall have taken or obtained, or shall have given or affected to give authority in the whole to take or obtain.

* * * * *

Gunpowder and Firearms.

No. 81.]

[Dec. 23, 1830.

* * * * *

Statement by
 licensed person
 of firearms and
 ammunition
 which he intends
 to take beyond
 the boundary.

6. And be it further enacted that every person to whom such licence has been granted as aforesaid shall either in person or by his attorney duly constituted and appointed, whenever he shall think fit to transport merchandise beyond the said land boundaries, deliver to the Civil Commissioner by whom his licence has been granted a statement of the number and description of fire-arms and the quantity of ammunition which he intends to take beyond the said boundaries for the defence

No. 2, 1853.

of himself, his servants, and property, together with a statement, as near as may be, of the number and description of persons he intends to take with him, and which statement shall be subject to alteration by the said Civil Commissioner if he shall think fit; and the said statement, when approved of by the said Civil Commissioner, shall be signed by the person to whom the said licence is granted, and shall be kept by the said Civil Commissioner; and the said Civil Commissioner shall give the said licensed trader a certificate or certified copy of the said statement, which shall remain in the possession of the person who is left in charge of the said trader's wagons or other conveyances: and if any licensed trader shall not make such statement, or if he, or other person acting on his behalf, shall refuse to show the certified copy thereof to any Justice of the Peace, commissioned officer, or non-commissioned officer, field-commandant, field-cornet, or constable, on demand, who are hereby authorized and required to inspect the same, he shall and may be detained and brought before the Resident Magistrate of the district where the offence is committed, and shall on conviction be liable to a fine not exceeding twenty pounds and to forfeiture of his licence.

Certified copy of statement furnished by Civil Commissioner for exhibition to Justices of the Peace and other authorities.

Penalty on omission to make statement, or on non-production of certified copy, £20, and forfeiture of licence.

7. And be it further enacted that all Justices of the Peace, and other persons hereinbefore authorized to inspect certificates, are hereby authorized and required to search the wagons and other conveyances of any such licensed trader which they suspect to contain any fire-arms or ammunition not set forth in the certificate of such trader, and to seize the same if they contain any such arms or ammunition; and every such licensed trader in whose possession a greater number of fire-arms or a greater quantity of ammunition shall be found within the boundaries of the Colony than the number or quantity set forth in his certificate, shall on conviction incur and be liable to a fine not exceeding fifty pounds, and shall forfeit his licence together with the wagons or other conveyances and the effects loaded thereon at the time of their seizure.

Authority of Justices and others to search wagons of licensed traders containing fire-arms or ammunition not set forth in statement.

Penalty, £50 and forfeiture of licence.

* * * * *

No. 2.]

[October 10, 1853.

* * * * *

2. And be it enacted that no gunpowder and no gun or pistol, or lock, stock, barrel, or other part of any gun or pistol, and no percussion caps such as are used for firing off guns or pistols, and no lead, shall at any port or place within this Colony be shipped or placed on board any ship or vessel or be placed or put on board any boat in order to be conveyed to any ship or vessel being in or near such port or place in order to be carried to any port or place whatsoever, whether in Africa or elsewhere, without the permission in writing of the chief officer of Her Majesty's Customs at or nearest to such port or place of shipment first had and obtained⁽¹⁾; and if any person shall at any such port or place as aforesaid ship or place or caused to be shipped or placed in or on board any ship or vessel any of the said articles without having previously obtained the permission in writing by this section required, such article or articles shall be forfeited to Her Majesty, and such persons shall for every such shipment in or upon any ship or vessel be liable to a penalty of not exceeding⁽²⁾ five

Permission of chief officer of customs for shipment of gunpowder, fire arms, &c.

Penalty on contravention.

⁽¹⁾ Trustees Walwich Bay Co. v. Collector of Customs 2 S. 287

⁽²⁾ Printed as amended by Act 11, 1875 § 2.

No. 2, 1853. hundred pounds sterling; and any person so offending may be arrested under the warrant of any Resident Magistrate or Justice of the Peace of the Colony and committed to the public prison nearest to the place where such offence shall have been committed, there to remain until such offender shall enter in a recognizance before such or some other Resident Magistrate or Justice of the Peace with two sufficient persons as sureties and co-principal debtors in the sum of five hundred pounds sterling, conditioned to abide such judgment as may by law be given against such offender in respect of such offence or until such offender shall be liberated in due course of law: Provided always, that nothing in this section contained shall be construed to extend to or affect any of the articles aforesaid the property of Her Majesty the Queen or any of the said articles really and *bona fide* intended for the use of the mariners or others navigating the ship or vessel in or on board of which such article or articles may be shipped, or for the use of any passenger in or on board of any such ship or vessel not being a ship or vessel clearing out for some port or place in Africa.

List of fire-arms, &c., for ship's use.

Seizure of arms, &c., not on list.

Penalty thrice the value of article seized.

Return of arms, &c., of passengers.

Seizure of articles not in such return.

Penalty thrice the value.

5. And be it enacted that the master of every ship or vessel clearing out at any port in this Colony for any port or place in Africa shall furnish in duplicate to the Collector of Customs at the port of clearance a list signed by the said master of all fire-arms, gunpowder, and lead on board such ship or vessel for ship's use; one copy of which list shall be retained by such Collector and the other copy shall be attached to the vessel's clearance; and any gunpowder, fire-arms, or lead found on board any such ship or vessel after the time of her clearance not being entered on such list and not being part of her cargo may be seized by any officer of customs or officer of the law proper for the execution of criminal warrants, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matter or thing so forfeited, such fine to be paid by the said master.

6. And be it enacted that a return in writing of all gunpowder, fire-arms and lead not being cargo brought or had on board of any such ship or vessel as in the last preceding section mentioned by any person proceeding as a passenger thereby shall after being signed by such passenger be by him or by some one on his behalf delivered to such chief officer of Customs as aforesaid, at or before the time of the clearing out of such ship or vessel, who is hereby empowered in case it shall appear to him that the quantity of gunpowder or of lead or the number of fire-arms stated in such return is not greater than such passenger might reasonably require for the personal defence of himself and his servants or for sporting, to grant to such person a permission in writing to take or have the same; and if any gunpowder, fire-arms, or lead in regard to which such a return as aforesaid ought to have been made, but in regard to which no such return has been made, shall be found on board any such last-named ship or vessel after the same shall have cleared out; then the said gunpowder, fire-arms, or lead as the case may be may be seized by any such officer as in the last preceding section mentioned, and the same shall be forfeited to Her Majesty the Queen, together with a fine of three times the full value of the matters or things so forfeited, such fine to be paid by such passenger, who may be arrested in manner and form as in the

second section provided in regard to the person whose arrest is therein authorized, and may be committed to such prison as in the said section mentioned, there to remain until he shall by some such recognizance as aforesaid, have given security in a sum sufficient to cover and make good such treble value as aforesaid that he will abide such judgment as may by law be given against such passenger in respect of such offence, or until such passenger shall be liberated in due course of law: Provided, also, that such chief officer of Customs may, should he see fit, require such passenger to enter into a bond or obligation of the like nature with the bond or obligation hereinbefore in the third section of this Ordinance described.

No. 2, 1853.

Arrest of passenger pending security for penalty.

* * * * *

8. (1) And be it enacted that no storekeeper of any private magazine situate within this Colony shall from and after the commencement of this Ordinance issue any gunpowder in any quantity whatsoever from any such magazine without the previous permission in writing of the Resident Magistrate of the district in which such magazine shall be situated; which permission shall set forth the quantity of gunpowder to be issued and the name of the person to whom it is to be issued, and which permission, which shall in substance correspond with the form marked No. 3 in the schedule to this Ordinance annexed, shall be delivered to and preserved by such storekeeper; and any storekeeper who shall deliver any gunpowder contrary to the provisions of this section shall for every offence be liable upon conviction to be imprisoned and kept at hard labour for any term not exceeding seven years: Provided that if in any case any private magazine shall be situated at a greater distance than twelve miles from the office of the Resident Magistrate of the district in which such magazine shall be situated, then the permission in writing of any Justice of the Peace of the said district (not being the owner of or interested in the gunpowder mentioned in such permission) may be received by such storekeeper in lieu and stead of the permission of the said Resident Magistrate: provided, also, that in any district in which there shall not be at the time of the commencement of this Ordinance such safe and fitting private magazines as shall be required for the secure storing of such gunpowder as shall be in or come to such district, every such building, store, or place as the Resident Magistrate of such district shall approve of and appoint to be a private magazine for the time being shall be deemed and taken to be a private magazine within the meaning of this Ordinance: provided, also, that such Resident Magistrate may subject to the confirmation or disallowance of the Governor appoint a fit and proper person to be storekeeper to any such temporary magazine as well as to any private magazine in his district which shall not already have a storekeeper duly appointed; and provided, also, that every store or place belonging to Her Majesty's Board of Ordnance in which gunpowder belonging to private persons shall be permitted to be placed shall also so far as such last-mentioned gunpowder is concerned, but no farther, be deemed to be a private magazine: and provided, also, that no storekeeper of any such magazine shall open or permit to be opened within any such magazine any barrel, keg, or other case containing gunpowder, and any such storekeeper as

Issues from private magazine by authority of Resident Magistrate.

Form of authority.

Penalty on delivering without authority.

Cases in which Justice of the Peace may grant authority.

Approval by Magistrate of private magazine and appointment of temporary storekeeper.

Penalty on opening barrel, &c., in private magazine.

(1) See § 3 Act 14, 1857, Act 13, 1877, and § 1 Act 29, 1879.

No. 2, 1853.

Appointment
by Magistrate of
place where
gunpowder in
quantities not
more than
100lbs. may be
opened.

aforesaid who shall contravene this provision of this section shall upon conviction forfeit not exceeding⁽¹⁾ fifty pounds; and provided, also, that in case there shall be in any town or place in which there shall be one private magazine or more private magazines than one any licensed dealers therein at whose premises it shall be deemed to be inadvisable that gunpowder should be retailed in the manner hereinafter contemplated and provided for, it shall and may be lawful for the Resident Magistrate of the district in which any such private magazine shall be situated by writing under his hand to authorize and require the storekeeper thereof to remove from and out of such magazine, at the desire of the owner of any of the gunpowder stored therein, any quantity of such owner's gunpowder not exceeding one hundred pounds weight at any one time to some safe and convenient place adjacent to such magazine and to be mentioned in such written authority, there to be strictly kept by such storekeeper, at which safe place any barrel, keg, or other case containing such removed gunpowder may be opened by such storekeeper, and any quantity of gunpowder mentioned in any such permission as is in this section mentioned may be from time to time delivered by such storekeeper; but no second or subsequent removal as aforesaid of any gunpowder belonging to any one owner shall take place as long as any of that owner's gunpowder first or previously removed shall not have been delivered by such storekeeper under and by virtue of some such permission as aforesaid, and all gunpowder in any such place as aforesaid and not yet delivered by such storekeeper shall be regarded, deemed, and judged of for all purposes of this Ordinance precisely as if such place were actually part and parcel of the private magazine under such storekeeper's control.

Proof of
proper purpose
for which gun-
powder is
needed.

9. And be it enacted that no such Resident Magistrate or Justice of the Peace as is in the last preceding section mentioned shall grant any such permission as in the said section mentioned until it shall have been made to appear to his satisfaction by the person applying for the same that the gunpowder sought to be taken from or out of such private magazine is needed for some necessary and proper purpose; and every such Resident Magistrate or Justice of the Peace is hereby authorized, in every case in which he shall see reason or think it necessary so to do, to require before granting such permission that the person desiring the same shall enter into a bond or obligation, which shall in substance correspond with the form marked No. 2 in the schedule to this Ordinance annexed, conditioned for the production of such proof or evidence as such bond shall specify that the gunpowder to be mentioned in such permission has been actually delivered or dealt with in the manner proposed by such person and agreed to by such Magistrate or Justice of the Peace.

Transmission
of copy of per-
mission from
Justice of the
Peace to Re-
sident Magis-
trate.

10. And be it enacted that every Justice of the Peace who shall under the circumstances in the said eighth section mentioned grant any such permission as therein authorized shall forthwith transmit to the Resident Magistrate of the district a copy of such permission, in order that the same may by such Resident Magistrate be recorded.

* * * * *

Penalty of
£500 or seven
years' imprison-

13. And be it enacted that no person whomsoever whether licensed or unlicensed shall from or after the commencement of this Ordinance,

(1) Printed as amended by Act 11, 1875, § 2.

under or by virtue of any sale, barter, gift, or other transaction, or for any cause or reason whatsoever, deliver (except as hereinafter is excepted) at any shop, store, private dwelling or other place within this Colony any gun or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps exceeding in any one week one box containing not more than five hundred in number, or any gunpowder, or any lead⁽¹⁾, and any person contravening any of the provisions of this section shall upon conviction forfeit the sum of not exceeding⁽²⁾ five hundred pounds; or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years: Provided that nothing in this section contained shall be deemed or taken to prevent any sale, barter, gift, or loan, to any Resident Magistrate or Justice of the Peace, nor to any person who shall produce and deposit with the person delivering the gun or other matter or thing mentioned in such certificate a written certificate signed by either of the last-mentioned⁽³⁾ persons, certifying that the bearer, who must be named in such certificate, is to the knowledge of the person signing such certificate a fit and proper person to obtain such gun or other matter or thing as aforesaid, which certificate shall in substance correspond with the form marked No. 4 in the schedule to this Ordinance annexed⁽⁴⁾: Provided, also, that no Justice of the Peace residing or being within twelve miles of the office of the Resident Magistrate of the district shall grant any such certificate as aforesaid: Provided, at the same time that no certificate granted in contravention of this prohibition shall be deemed to be on that account invalid, so as to subject any person acting upon it to any pains or penalties; and provided, further, that nothing herein contained shall be deemed or taken to prevent one member of any military or burgher force from delivering without the production of any such certificate as aforesaid any of the matters or things aforesaid to any member of the same or any similar force, or to prevent any person from delivering any of the matters or things aforesaid to any other person then living with him under the same roof or being in his service for the private use of such other person; and provided, lastly, that nothing in this section contained shall extend to any gunpowder duly delivered by any store-keeper from any private magazine under and by virtue of the permission in writing hereinbefore in the eighth section of this Ordinance mentioned, nor to any gunpowder or fire-arms delivered by any person in the military, naval, or civil service of Her Majesty, acting by or under Her Majesty's authority.

No. 2, 1853.

ment on delivery of fire-arms, &c., by persons licensed or unlicensed, unless to a Magistrate or Justice of the Peace;

Or unless a certificate from a Resident Magistrate or Justice of the Peace shall have been produced;

Or unless both party delivering and party receiving be members of military or burgher force, or person receiving be inmate with or servant of person delivering.

Exception as to gunpowder.

15. And be it enacted that if any person not being licensed to deal in gunpowder shall store, keep, or have any gunpowder whatsoever other than such gunpowder as such person shall *bond fide* have and keep for his own private use, or if any person licensed to deal in gunpowder, shall, from or after the commencement of this Ordinance store, keep, or have in any warehouse, shop, or place not being a bonding or

Penalty of £500 or seven years' imprisonment on unlicensed person having more gunpowder than *bond fide* for private use, and

(1). Provisions of this Ord. as to lead restricted to certain divisions. See Acts 14 of 1857, and 14 of 1866-67.

(2). Printed as amended by Act 11, 1875 § 2.

(3). Governor may appoint Clerk to R.M. or other person to grant such certificates, Act 29 of 1879. See also Act 13, 1878. *R. v. Chabaud*. Buch. 1877 p. 149.

(4). As to issue of certificates to natives, see § 13 Act 3, 1877.

No. 2, 1853.
on licensed persons having more than 50lbs. out of bonding stores.

Forfeiture.

Penalty of seven years' imprisonment on refusal to admit Magistrate or Justice.

Declaration of licensed dealer to obtain gunpowder from magazine.

private magazine, any quantity of gunpowder exceeding at any one time fifty⁽¹⁾ pounds weight thereof, every such person shall for every such offence forfeit upon conviction the sum of not exceeding⁽²⁾ five hundred pounds, or he may instead of forfeiting such sum be imprisoned and kept at hard labour for any term not exceeding seven years; and when and as often as it shall be made to appear to any Resident Magistrate or Justice of the Peace, from information taken on oath, that any gunpowder is stored or kept in any dwelling-house or other place in contravention of this section, such Resident Magistrate or Justice of the Peace may in person demand entrance into such dwelling-house or other place, and upon refusal or neglect of any person or persons therein to admit such Resident Magistrate or Justice, such Resident Magistrate or Justice may force an entrance thereinto, and remove all gunpowder found therein, and the same shall be forfeited to Her Majesty the Queen; and every person who shall be within any such house or place at the time of demand made for admittance and refusal or neglect to admit shall upon conviction of the offence of contravening this section by refusing or neglecting to admit such Magistrate or Justice be imprisoned and kept at hard labour for any period not exceeding seven years.

16. And be it enacted that no such Resident Magistrate or Justice of the Peace as in the eighth section of this Ordinance mentioned shall grant to any licensed dealer any such permission as in the said eighth section mentioned to obtain from any private magazine any quantity of gunpowder to be disposed of by such dealer until such dealer shall make in the presence of such Resident Magistrate or Justice of the Peace his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

"I, A. B., of —, licensed dealer in gunpowder, do solemnly and sincerely declare that there is not now in my possession or at my disposal or under my control, any gunpowder whatsoever," (or, *if the fact be that such dealer does possess gunpowder stored in some private magazine then let him make his declaration as above, adding to it, "save and except such as is stored in"—here describe the private magazine.*)

(Signed) A. B.

Declared before me, this — day of —, 18—.

C. D.,

Resident Magistrate, or
Justice of the Peace [as
the case may be.]

Production of certificates to cover first quantity, before permission for second quantity may be granted.

17. ⁽³⁾ And be it enacted that when and as often as any Resident Magistrate or Justice of the Peace shall have given to any licensed dealer as aforesaid any one such permission as aforesaid to obtain from any private magazine fifty pounds weight of gunpowder, to be by him disposed of, no second such permission shall be granted to him until he shall produce to and deposit with such Resident Magistrate or Justice of the Peace (as the case may be) certificates such as are in the thirteenth section of this Ordinance mentioned, covering and accounting for all the gunpowder by such dealer obtained by virtue

⁽¹⁾ One hundred, see § 4 Act 14, 1857. See also § 20 Ordinance 7, 1834.

⁽²⁾ Printed as amended by § 2 Act 11, 1875.

⁽³⁾ Amended by § 5, Act 14 of 1857, *infra*.

No. 2, 1853.

of the first permission granted to him under this Ordinance; and in like manner, no fresh permission shall at any time be granted to any licensed dealer to obtain a still further supply of fifty pounds weight until he shall have produced and deposited certificates covering and accounting for the whole of the fifty pounds weight last issued to him; and so on as long as this Ordinance shall remain in force; and moreover, such licensed dealer shall upon the occasion of every second or subsequent application for such a permission as aforesaid make in the presence of the Resident Magistrate or Justice of the Peace (as the case may be) his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

"I, A. B., of—, licensed dealer in gunpowder, do solemnly and sincerely declare that I have not had in my possession or sold or otherwise disposed of to any person whomsoever, since the—day of—, 18—, [state the date of the "permission" last issued] any other gunpowder than the quantity mentioned in the permission granted to me on the day last mentioned, and which quantity I have disposed of under and by virtue of the certificates now by me produced.

Declaration on application for second and further quantities.

(Signed) A. B.

Declared before me, this—day of—18—.

C. D.,

Resident Magistrate or Justice of the Peace,
[as the case may be].

18. And be it enacted that if any person shall make any wilfully false statement in any declaration required by either of the two immediately preceding sections such person shall upon conviction incur the penalties by law provided for the crime of perjury.

False declarations punishable as perjury.

19. And be it enacted that in every case in which any such licensed dealer as aforesaid shall have obtained under and by virtue of any such permission as aforesaid, the fifty (1) pounds weight of gunpowder mentioned in such permission, it shall and may be lawful for the Resident Magistrate or Justice of the Peace who shall have granted such permission to enter at all reasonable times the licensed premises of such dealer, and require the production of such gunpowder or otherwise the production of certificates covering and accounting for so much thereof as shall not be produced, and in case such dealer shall fail to produce either the whole quantity of gunpowder obtained by him under and by virtue of such permission of certificates covering and accounting for so much thereof as shall not be produced, such dealer shall for such offence incur the like penalty as that which is in the thirteenth section of this Ordinance provided for in regard to the offence therein described: Provided, also, that every such dealer shall on or before the seventh of every month deliver or cause to be delivered to the Resident Magistrate of the district a return or account in writing signed by such dealer, setting forth the several receipts and deliveries of gunpowder if any made or received by such dealer during the preceding month and the quantity of gunpowder in his possession at the expiration of such preceding month; and such return or account shall specify in regard to each delivery the quantity delivered, the person to whom delivered, and the grantor of the certificate by virtue of which such delivery was made; and any licensed dealer who shall

Entry of Magistrate into dealer's premises.

Penalties of § 13 on dealers not properly accounting.

Monthly return of receipts and deliveries.

Penalty on neglect of return—£500.

(1) But see § 5 Act 14, 1857 *infra*.

No. 2, 1853.

without lawful and sufficient cause neglect to deliver or cause to be delivered in manner aforesaid any such return or account, or who shall deliver, or cause to be delivered any such return or account, containing anything wilfully erroneous, shall for every such offence forfeit the sum of not exceeding ⁽¹⁾ five hundred pounds.

Transmission
by Justices of
certificates de-
posited by dealer
to Resident
Magistrate.

20. And be it enacted that every Justice of the Peace with whom any such certificates as aforesaid shall be deposited by any licensed dealer as aforesaid when applying under the provisions of the eighth section of this Ordinance for a fresh permission to obtain a further quantity of fifty pounds weight of gunpowder to be by him disposed of at his premises shall forthwith transmit to the Resident Magistrate of the district copies of all such certificates, in order that such Resident Magistrate shall, as he is hereby required to do, include such certificates, as well as all certificates which may have been in like manner deposited with himself, in the monthly ⁽²⁾ tabular statements which are herein before in the eleventh section of this Ordinance directed to be transmitted to the Secretary to Government, and affixed at or near such Resident Magistrate's public office.

* * * *

SCHEDULE 3.

Authority for
issue from
private maga-
zine.

Form of permission by Resident Magistrate to authorize issue of gunpowder from Private Magazine ⁽³⁾.

I, —, Resident Magistrate of —, do hereby authorize [*the name of the applicant*] of [*the residence of applicant*] to receive from the store-keeper of [*describe the magazine*] — pounds of gunpowder, it having been made to appear to my satisfaction that such gunpowder is needed for a necessary and proper purpose.

Dated this — day of — 185—.

A. B., Resident Magistrate.

SCHEDULE 4.

Authority for
purchase of
guns, &c.

Form of certificate authorizing the purchase of guns, powder, &c.

I, —, do hereby certify that the bearer [*the name of the applicant*] of [*the residence of the applicant*] is to my knowledge a fit and proper person to obtain and have — pounds of gunpowder [*or a gun, or — pounds of lead*] which he requires for his own use. Dated this — day of — 185—.

A. B., Resident Magistrate

[or otherwise as the case may be.]

No. 14, 1857.]

[June 29th, 1857.]

* * * *

Previous laws,
excepting the
repugnant
portion thereof,
to continue until
end of 1858.

1. The Ordinance No. 2, 1853, and the Act No. 19, 1856, and every provision of the said Ordinance and Act respectively shall except as in the next succeeding sections is excepted continue and be in force till

⁽¹⁾ Printed as amended by Act 11, 1875.

⁽²⁾ But see § 3 Act 29, 1879.

⁽³⁾ See Act 14, 1857, § 3.

the expiration of the year 1858 ⁽¹⁾, anything in the said Ordinance or Act to the contrary notwithstanding. No. 14, 1867.

3. It shall be lawful for any Resident Magistrate or Justice of the Peace entitled to grant any such permission as in the eighth section of the Ordinance aforesaid mentioned, should such Magistrate or Justice in the exercise of his discretion think it proper so to do, to grant to any person licensed to deal in gunpowder such a permission as is in the eighth section aforesaid mentioned to obtain at one and the same time any quantity of gunpowder not exceeding one hundred pounds weight thereof, and the form of permission set forth in schedule three of the said Ordinance shall be altered accordingly.

Resident Magistrate or Justice of the Peace may permit issues of 100lbs. of gunpowder from private magazines.

Form of permission.

4. It shall be lawful for such licensed dealer receiving and acting upon such permission as aforesaid to store at his warehouse or shop any quantity of gunpowder not exceeding one hundred pounds weight thereof, anything in the fifteenth section of the said Ordinance and in the twentieth section of Ordinance No. 7, 1834, to the contrary notwithstanding: Provided that every licensed dealer shall be bound to satisfy the Resident Magistrate of his district or some Justice of the Peace named by such Magistrate that the premises in which such dealer proposes to store or keep any such gunpowder are fit and proper for the purpose and not dangerous to the public safety.

Licensed dealer receiving such permission may have 100lbs. of gunpowder.

Provided it be safely stored.

5. It shall be lawful for any licensed dealer who shall have obtained one permission to obtain at one and the same time any quantity of gunpowder not exceeding one hundred pounds weight thereof to obtain another permission for another quantity of gunpowder not exceeding one hundred pounds weight thereof, and so on from time to time as circumstances shall require; in order that such licensed dealer shall be able, subject at all times to the discretion of the Resident Magistrate or Justice of the Peace as the case may be, to have always on hand for the purpose of his trade a moderate supply of both fine gunpowder and coarse gunpowder: Provided that no licensed dealer shall store, keep, or have any quantity of gunpowder of any description exceeding at any one time one hundred pounds weight thereof; and that all and singular the penalties mentioned in the fifteenth section of the Ordinance aforesaid, No. 2, 1853, shall apply to any licensed dealer who shall store, keep, or have at any one time any quantity of gunpowder exceeding one hundred pounds weight thereof, precisely as if the said fifteenth section in reference to the largest quantity of gunpowder which any licensed dealer might lawfully store, keep, or have at any one time had specified one hundred pounds weight thereof instead of fifty pounds weight thereof: Provided, also, that as often as any licensed dealer shall have obtained one such permission as aforesaid no second such permission shall be granted to him until he shall produce to and deposit with the Resident Magistrate or Justice of the Peace as the case may be certificates granted under the thirteenth section of the said Ordinance covering and accounting for a quantity of gunpowder equal to the quantity which such dealer shall desire a permission to obtain; and so on from time to time in regard to every subsequent permission which may be applied for: And provided that as often as the licensed dealer applying for any such permission as is in this section mentioned shall have disposed of all gunpowder obtained

Licensed dealer having a permission may receive a further one, to supply his trade in respect of different qualities of powder.

Not to have at any one time more than 100lbs.

Penalty imposed by § 15, Ordinance 2, 1853.

No second permission to be given unless upon production of certificates covering the disposal of an equal quantity under previous permission.

If quantity under any one permission be exhausted, § 17, Ord. 2, 1853, to apply to every fresh application

(1). Made perpetual by Act 28 of 1864.

No. 14, 1857.

Solemn declaration to be made..

by him under any previous permission the provisions of the seventeenth section of the Ordinance aforesaid shall apply to every such application, precisely as if the said seventeenth section instead of authorizing and relating to no permissions except permissions for fifty pounds weight of gunpowder had authorized and related to permissions for any quantity of gunpowder not exceeding one hundred pounds weight thereof: Provided, lastly, that as often as any licensed dealer shall make an application for a further supply of gunpowder whilst any portion of any gunpowder previously obtained by him shall be still in his possession, such dealer shall make a solemn declaration, which shall be in substance and effect as follows, that is to say:

I, A. B., of —, licensed dealer in gunpowder, do hereby solemnly and sincerely declare that I have not sold or otherwise disposed of to any person whomsoever, since the — day of —, 185—[*state the date of the "permission" last issued to such dealer*], any gunpowder whatsoever, except — pounds weight thereof, which said quantity of — pounds I have disposed of under and by virtue of the certificates now by me produced. And I further declare that I have not now in my possession any gunpowder whatever, except — pounds weight thereof.

(Signed) A. B.

Declared before me this — day of —, 185—.

C. D., Resident Magistrate,

[or Justice of the Peace, *as the case may be*]

Penalties for perjury to apply to false declaration.

6. If any person shall make any wilfully false statement in any such declaration as is in the last preceding section mentioned such person shall upon conviction incur the penalties by law provided for the crime of perjury.

Section 8, Ordinance No. 2, 1853, to extend to permissions issued under this Act and to gunpowder so obtained.

7. All and singular the several provisions of the Ordinance aforesaid which relate to the permissions in the eighth section of the said Ordinance mentioned and to the gunpowder obtained by virtue of such permissions, and which provisions are not repugnant to the provisions of this Act, shall extend and apply to the permissions authorised by this Act.

Certificate under § 13 of Ordinance No. 2, 1853, not transferable.

8. No person who shall have received from any Resident Magistrate or Justice of the Peace any such certificate as is in the thirteenth section of the Ordinance aforesaid mentioned shall deliver such certificate to any other person with intent that the gunpowder mentioned in such certificate should be obtained for the use of any person other than the person named in such certificate; nor shall any person who shall have received any such certificate deliver the same to or leave the same with any licensed dealer without at the time [of such delivery or within three days thereafter removing from the premises of such dealer the gunpowder mentioned in such certificate. Any person contravening any of the provisions of this section shall upon conviction be liable to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any period not exceeding six months.

All gunpowder mentioned in such certificate to be removed within three days.

Penalty for contravention.

* * * * *

No. 13, 1878.]

[August 2nd, 1878.

Governor may by proclamation fix any district

1. It shall and may be lawful for the Governor aforesaid, by and with the advice of the Executive Council of the said colony, from time

to time to proclaim certain districts or portions of districts as areas within which it shall not be lawful for any person (except such persons as are hereinafter excepted) to bear, carry, or have in his or her possession, custody, or power, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition unless such person shall be licensed so to do as hereinafter provided: Provided, always, that any such proclamation may from time to time be revoked or repealed (either as to the whole or any part of any such proclaimed area) by the said Governor, by and with the advice aforesaid, when and as occasion may seem to justify such revocation or repeal.

No. 13, 1878.

within which no arms may be possessed without a licence.

Proclamation may be at any time revoked.

4. Every such proclamation shall name a certain day on or before which every person residing or being within the district or area therein specified, and not being a resident magistrate, justice of the peace, field-cornet, or person serving in Her Majesty's naval or military forces, or enrolled in any colonial corps, for the time being, whether burgher or volunteer ⁽¹⁾ or in the Frontier Armed and Mounted Police, or in any other armed police force legally constituted within this colony, not having a licence as in this Act provided, shall deposit and leave at the office of the resident magistrate of such district, or at such other place as may be named in the said proclamation for the deposit thereof, all arms and weapons, or portions of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition then being in his or her possession, custody, or power, and a receipt for the same shall be given by the person authorized to receive them to the person so depositing them.

Proclamation to fix day before which persons having arms, and not authorized to have them, shall deposit them with magistrate.

Receipt to be given for arms and ammunition deposited.

9. Every person resident or being within any district or area proclaimed as aforesaid, not being one of those excepted in the fourth clause of this Act, who shall be found carrying, or in possession of, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, after the date named in the proclamation for the deposit thereof, may be required by any resident magistrate, justice of the peace, field-cornet, or police constable, or by any person producing his or her own licence under this Act, to produce and exhibit his or her licence for having or carrying such arms, weapons, bullets, cartridges, gunpowder, or other ammunition; and upon his or her refusal or inability so to do, such first mentioned person may be forthwith arrested without any warrant issued for that purpose, and upon being so arrested shall be taken with all reasonable speed before the resident magistrate of the district in which he shall be so found, or before the nearest justice of the peace, to be dealt with according to law.

All persons not specially excepted by 4th section found carrying or having arms may be required to produce licence.

In case of non-production may be arrested.

10. It shall and may be lawful for all resident magistrates, justices of the peace, field-cornets, and police constables, and they are hereby required so to do, upon reasonable suspicion that any person within any proclaimed district, or portion of a district, not being one of the persons hereinbefore excepted, and not being licensed under this Act, is in possession of any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, to make diligent search for the same, and to seize any such arms, weapons, bullets, cartridges, gunpowder, or other ammunition, when found, without any warrant being issued or obtained for such search or seizure.

Certain officials to search for arms, &c., without warrant, on reasonable suspicion.

(¹) Printed as amended by Act 4, 1879 § 1.

No. 2, 1879.

Repugnant
portion of 13
of Ordinance 2
of 1853 repealed.
Restrictions
on the sale,
repair, or deli-
very of arms
without the pro-
duction of li-
cence and per-
mit.

12. Everything contained in the 13th section of Ordinance No. 2 of 1853, which may be in conflict with, or repugnant to, the provisions of this Act shall be, and the same hereby is, so far as such conflict or repugnance may exist, but not otherwise, repealed. No person within any district or area proclaimed as aforesaid shall sell to, or make, mend, repair, or keep for any person (not being a person under the 4th section of this Act excepted or not being a person under the provisions of this Act licensed), any arms or weapons, or any portion of any arms or weapons, or any bullets, cartridges, or other ammunition: and no person within such district or area as aforesaid shall, under or by virtue of any sale, barter, gift, or other transaction, deliver to any person whomsoever unless a resident magistrate, justice of the peace, or field-cornet, any arms or weapons, or any portions of any arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, without production of his licence under this Act, and without a written permission for that purpose first had and obtained from the resident magistrate of the district within which it is proposed that such delivery shall take place, or from some other person authorized to issue licences under this Act for such district, which permission shall be, as nearly as may be in the form numbered 3 in the Schedule to this Act annexed. And any person guilty of contravening any one of the provisions in this section contained shall, upon conviction, be liable to imprisonment, with or without hard labour, for any period not exceeding seven years, or to pay a fine not exceeding five hundred pounds sterling, and to imprisonment with or without hard labour for a period not exceeding two years, unless such fine be sooner paid.

* * * *

No. 29, 1879.]

[Sept. 11th, 1879.]

Register to be
kept of permits
granted.

3. Every Resident Magistrate and Justice of the Peace now authorized to grant or issue permissions or certificates as aforesaid, under any law in that behalf in force, and every person authorized under the provisions of this Act to grant or issue such permissions or certificates, shall be bound to keep a register of the permissions and certificates granted by him, setting forth the names, addresses, and descriptions of the person to whom such permissions or certificates were granted or issued, and the dates of such permissions or certificates, together with the number and description of firearms, and the quantity of gunpowder, percussion caps, or lead represented in every such permission or certificate, and every person granting or issuing permissions or certificates as aforesaid, shall further be bound to transmit to the office of the Colonial Secretary, during the months of January and July, in each year, copies of such registries, certified under his hand.

* * * *

Hawkers' Licences.

No 20, 1884.]

[July 25, 1884.]

No. 6, 1843.

For Hawkercs⁽¹⁾—Tariff 15.
Annual li-
cences.

To trade in one Division with or without one vehicle	£3 0 0
For each additional vehicle	1 0 0
To trade generally with or without one vehicle	10 0 0
For each additional vehicle	3 0 0

1. The above-mentioned licences shall either be written upon paper duly stamped, or shall have adhesive stamps of the proper value affixed to them before being issued. If adhesive stamps be used, they must be cancelled by writing thereon the initials of the officer issuing the licence, and the date on which he shall write the same, or in such other way as the Governor may from time to time direct.

2. All such of the above licences as are annual shall, no matter at what period of the year they may be taken out, expire on the thirty-first of December then next. When any such annual licence shall be issued upon or after the first of July, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of July, there shall be no deduction.

3. It shall be lawful for any resident magistrate, justice of the peace, field-cornet, assistant field-cornet, excise officer, or chief constable, to demand from any person travelling in this colony as a hawker or trader, the production of his licence; and unless such person shall, on such demand, produce a licence duly stamped, and still in force, it shall be lawful for the person demanding the same to carry and convey the hawker or trader, with his goods, to the nearest resident magistrate, and such magistrate shall have jurisdiction to try the offender, although no act of trading may be proved to have been done within the district of such magistrate.

4. No hawker or pedlar shall obtain a licence until he shall produce to the officer authorised to issue such licence a certificate signed by some officer of police or by the chief constable, or by a justice of the peace for the division or district in which the said licence is applied for, that the applicant has resided within the said division or district for one month, and that he is, to the best of his knowledge and belief, a person of good character, and intends in good faith to carry on the trade of a hawker.

Health, Public.

No. 4, 1883.]

[Sept. 6th, 1883.]

J.P.s have jurisdiction under §§ 2, 19, 22, 23, 37, 38, and 48; but so have Special J.P.s; these sections will therefore be found under Special J.P.s *infra*.

Insolvent Estates.

No. 6.]

[October 24th, 1843.]

76. And be it enacted, that in all cases when, on the application of the Master of the Supreme Court, or any trustee or trustees of any

Recovery of
sequestrated
effects con-
ceded.

(1) *Miselwitz v. Kimberley Borough Council* & High Court 397.

No. 2, 1853.

Appointment
by Magistrate of
place where
gunpowder in
quantities not
more than
100lbs. may be
opened.

aforesaid who shall contravene this provision of this section shall upon conviction forfeit not exceeding⁽¹⁾ fifty pounds; and provided, also, that in case there shall be in any town or place in which there shall be one private magazine or more private magazines than one any licensed dealers therein at whose premises it shall be deemed to be inadvisable that gunpowder should be retailed in the manner hereinafter contemplated and provided for, it shall and may be lawful for the Resident Magistrate of the district in which any such private magazine shall be situated by writing under his hand to authorize and require the storekeeper thereof to remove from and out of such magazine, at the desire of the owner of any of the gunpowder stored therein, any quantity of such owner's gunpowder not exceeding one hundred pounds weight at any one time to some safe and convenient place adjacent to such magazine and to be mentioned in such written authority, there to be strictly kept by such storekeeper, at which safe place any barrel, keg, or other case containing such removed gunpowder may be opened by such storekeeper, and any quantity of gunpowder mentioned in any such permission as is in this section mentioned may be from time to time delivered by such storekeeper; but no second or subsequent removal as aforesaid of any gunpowder belonging to any one owner shall take place as long as any of that owner's gunpowder first or previously removed shall not have been delivered by such storekeeper under and by virtue of some such permission as aforesaid, and all gunpowder in any such place as aforesaid and not yet delivered by such storekeeper shall be regarded, deemed, and judged of for all purposes of this Ordinance precisely as if such place were actually part and parcel of the private magazine under such storekeeper's control.

Proof of
proper purpose
for which gun-
powder is
needed.

9. And be it enacted that no such Resident Magistrate or Justice of the Peace as is in the last preceding section mentioned shall grant any such permission as in the said section mentioned until it shall have been made to appear to his satisfaction by the person applying for the same that the gunpowder sought to be taken from or out of such private magazine is needed for some necessary and proper purpose; and every such Resident Magistrate or Justice of the Peace is hereby authorized, in every case in which he shall see reason or think it necessary so to do, to require before granting such permission that the person desiring the same shall enter into a bond or obligation, which shall in substance correspond with the form marked No. 2 in the schedule to this Ordinance annexed, conditioned for the production of such proof or evidence as such bond shall specify that the gunpowder to be mentioned in such permission has been actually delivered or dealt with in the manner proposed by such person and agreed to by such Magistrate or Justice of the Peace.

Transmission
of copy of per-
mission from
Justice of the
Peace to Re-
sident Magis-
trate.

10. And be it enacted that every Justice of the Peace who shall under the circumstances in the said eighth section mentioned grant any such permission as therein authorized shall forthwith transmit to the Resident Magistrate of the district a copy of such permission, in order that the same may by such Resident Magistrate be recorded.

* * * * *

Penalty of
£500 or seven
years' imprison-

13. And be it enacted that no person whomsoever whether licensed or unlicensed shall from or after the commencement of this Ordinance,

(¹) Printed as amended by Act 11, 1875, § 2.

under or by virtue of any sale, barter, gift, or other transaction, or for any cause or reason whatsoever, deliver (except as hereinafter is excepted) at any shop, store, private dwelling or other place within this Colony any gun or pistol, or any lock, stock, barrel, or other part of any gun or pistol, or any percussion caps exceeding in any one week one box containing not more than five hundred in number, or any gunpowder, or any lead⁽¹⁾, and any person contravening any of the provisions of this section shall upon conviction forfeit the sum of not exceeding⁽²⁾ five hundred pounds; or such person may instead of being sentenced to forfeit such sum be sentenced to be imprisoned and kept at hard labour for any period not exceeding seven years: Provided that nothing in this section contained shall be deemed or taken to prevent any sale, barter, gift, or loan, to any Resident Magistrate or Justice of the Peace, nor to any person who shall produce and deposit with the person delivering the gun or other matter or thing mentioned in such certificate a written certificate signed by either of the last-mentioned⁽³⁾ persons, certifying that the bearer, who must be named in such certificate, is to the knowledge of the person signing such certificate a fit and proper person to obtain such gun or other matter or thing as aforesaid, which certificate shall in substance correspond with the form marked No. 4 in the schedule to this Ordinance annexed⁽⁴⁾: Provided, also, that no Justice of the Peace residing or being within twelve miles of the office of the Resident Magistrate of the district shall grant any such certificate as aforesaid: Provided, at the same time that no certificate granted in contravention of this prohibition shall be deemed to be on that account invalid, so as to subject any person acting upon it to any pains or penalties; and provided, further, that nothing herein contained shall be deemed or taken to prevent one member of any military or burgher force from delivering without the production of any such certificate as aforesaid any of the matters or things aforesaid to any member of the same or any similar force, or to prevent any person from delivering any of the matters or things aforesaid to any other person then living with him under the same roof or being in his service for the private use of such other person; and provided, lastly, that nothing in this section contained shall extend to any gunpowder duly delivered by any storekeeper from any private magazine under and by virtue of the permission in writing hereinbefore in the eighth section of this Ordinance mentioned, nor to any gunpowder or fire-arms delivered by any person in the military, naval, or civil service of Her Majesty, acting by or under Her Majesty's authority.

No. 2, 1853.

ment on delivery of fire-arms, &c., by persons licensed or unlicensed, unless to a Magistrate or Justice of the Peace;

Or unless a certificate from a Resident Magistrate or Justice of the Peace shall have been produced;

Or unless both party delivering and party receiving be members of military or burgher force, or person receiving be inmate with or servant of person delivering.

Exception as to gunpowder.

15. And be it enacted that if any person not being licensed to deal in gunpowder shall store, keep, or have any gunpowder whatsoever other than such gunpowder as such person shall *bond fide* have and keep for his own private use, or if any person licensed to deal in gunpowder, shall, from or after the commencement of this Ordinance store, keep, or have in any warehouse, shop, or place not being a bonding or

Penalty of £500 or seven years' imprisonment on unlicensed person having more gunpowder than *bond fide* for private use, and

(1). Provisions of this Ord. as to lead restricted to certain divisions. See Acts 14 of 1857, and 14 of 1866-67.

(2). Printed as amended by Act 11, 1875 § 2.

(3). Governor may appoint Clerk to R.M. or other person to grant such certificates, Act 29 of 1879. See also Act 13, 1878. R. v. Chabaud. Buch. 1877 p. 149.

(4). As to issue of certificates to natives, see § 13 Act 3, 1877.

No. 2, 1853. private magazine, any quantity of gunpowder exceeding at any one time fifty⁽¹⁾ pounds weight thereof, every such person shall for every such offence forfeit upon conviction the sum of not exceeding⁽²⁾ five hundred pounds, or he may instead of forfeiting such sum be imprisoned and kept at hard labour for any term not exceeding seven years; and when and as often as it shall be made to appear to any Resident Magistrate or Justice of the Peace, from information taken on oath, that any gunpowder is stored or kept in any dwelling-house or other place in contravention of this section, such Resident Magistrate or Justice of the Peace may in person demand entrance into such dwelling-house or other place, and upon refusal or neglect of any person or persons therein to admit such Resident Magistrate or Justice, such Resident Magistrate or Justice may force an entrance thereto, and remove all gunpowder found therein, and the same shall be forfeited to Her Majesty the Queen; and every person who shall be within any such house or place at the time of demand made for admittance and refusal or neglect to admit shall upon conviction of the offence of contravening this section by refusing or neglecting to admit such Magistrate or Justice be imprisoned and kept at hard labour for any period not exceeding seven years.

on licensed persons having more than 50lbs. out of bonding stores.

Forfeiture.

Penalty of seven years' imprisonment on refusal to admit Magistrate or Justice.

Declaration of licensed dealer to obtain gunpowder from magazine.

16. And be it enacted that no such Resident Magistrate or Justice of the Peace as in the eighth section of this Ordinance mentioned shall grant to any licensed dealer any such permission as in the said eighth section mentioned to obtain from any private magazine any quantity of gunpowder to be disposed of by such dealer until such dealer shall make in the presence of such Resident Magistrate or Justice of the Peace his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

"I, A. B., of —, licensed dealer in gunpowder, do solemnly and sincerely declare that there is not now in my possession or at my disposal or under my control, any gunpowder whatsoever," (or, *if the fact be that such dealer does possess gunpowder stored in some private magazine then let him make his declaration as above, adding to it, "save and except such as is stored in"—here describe the private magazine.*)

(Signed) A. B.

Declared before me, this—day of—, 18—.

C. D.,

Resident Magistrate, or
Justice of the Peace [as
the case may be.]

Production of certificates to cover first quantity, before permission for second quantity may be granted.

17. ⁽³⁾And be it enacted that when and as often as any Resident Magistrate or Justice of the Peace shall have given to any licensed dealer as aforesaid any one such permission as aforesaid to obtain from any private magazine fifty pounds weight of gunpowder, to be by him disposed of, no second such permission shall be granted to him until he shall produce to and deposit with such Resident Magistrate or Justice of the Peace (as the case may be) certificates such as are in the thirteenth section of this Ordinance mentioned, covering and accounting for all the gunpowder by such dealer obtained by virtue

⁽¹⁾ One hundred, see § 4 Act 14, 1857. See also § 20 Ordinance 7, 1834.

⁽²⁾ Printed as amended by § 2 Act 11, 1875.

⁽³⁾ Amended by § 6, Act 14 of 1857, *infra*.

of the first permission granted to him under this Ordinance; and in like manner, no fresh permission shall at any time be granted to any licensed dealer to obtain a still further supply of fifty pounds weight until he shall have produced and deposited certificates covering and accounting for the whole of the fifty pounds weight last issued to him; and so on as long as this Ordinance shall remain in force; and moreover, such licensed dealer shall upon the occasion of every second or subsequent application for such a permission as aforesaid make in the presence of the Resident Magistrate or Justice of the Peace (as the case may be) his solemn declaration in writing, which solemn declaration shall be in substance as follows, that is to say:

No. 2, 1853.

"I, A. B., of—, licensed dealer in gunpowder, do solemnly and sincerely declare that I have not had in my possession or sold or otherwise disposed of to any person whomsoever, since the—day of—, 18—, [state the date of the "permission" last issued] any other gunpowder than the quantity mentioned in the permission granted to me on the day last mentioned, and which quantity I have disposed of under and by virtue of the certificates now by me produced.

Declaration on application for second and further quantities.

(Signed) A. B.

Declared before me, this—day of—18—.

C. D.,

Resident Magistrate or Justice of the Peace,

[as the case may be].

18. And be it enacted that if any person shall make any wilfully false statement in any declaration required by either of the two immediately preceding sections such person shall upon conviction incur the penalties by law provided for the crime of perjury:

False declarations punishable as perjury.

19. And be it enacted that in every case in which any such licensed dealer as aforesaid shall have obtained under and by virtue of any such permission as aforesaid, the fifty (1) pounds weight of gunpowder mentioned in such permission, it shall and may be lawful for the Resident Magistrate or Justice of the Peace who shall have granted such permission to enter at all reasonable times the licensed premises of such dealer, and require the production of such gunpowder or otherwise the production of certificates covering and accounting for so much thereof as shall not be produced, and in case such dealer shall fail to produce either the whole quantity of gunpowder obtained by him under and by virtue of such permission of certificates covering and accounting for so much thereof as shall not be produced, such dealer shall for such offence incur the like penalty as that which is in the thirteenth section of this Ordinance provided for in regard to the offence therein described: Provided, also, that every such dealer shall on or before the seventh of every month deliver or cause to be delivered to the Resident Magistrate of the district a return or account in writing signed by such dealer, setting forth the several receipts and deliveries of gunpowder if any made or received by such dealer during the preceding month and the quantity of gunpowder in his possession at the expiration of such preceding month; and such return or account shall specify in regard to each delivery the quantity delivered, the person to whom delivered, and the granter of the certificate by virtue of which such delivery was made; and any licensed dealer who shall

Entry of Magistrate into dealer's premises.

Penalties of § 13 on dealers not properly accounting.

Monthly return of receipts and deliveries.

Penalty on neglect of return—£500.

(1) But see § 5 Act 14, 1857 *infra*.

No. 2, 1853.

without lawful and sufficient cause neglect to deliver or cause to be delivered in manner aforesaid any such return or account, or who shall deliver, or cause to be delivered any such return or account, containing anything wilfully erroneous, shall for every such offence forfeit the sum of not exceeding ⁽¹⁾ five hundred pounds.

Transmission
by Justices of
certificates de-
posited by dealer
to Resident
Magistrate.

20. And be it enacted that every Justice of the Peace with whom any such certificates as aforesaid shall be deposited by any licensed dealer as aforesaid when applying under the provisions of the eighth section of this Ordinance for a fresh permission to obtain a further quantity of fifty pounds weight of gunpowder to be by him disposed of at his premises shall forthwith transmit to the Resident Magistrate of the district copies of all such certificates, in order that such Resident Magistrate shall, as he is hereby required to do, include such certificates, as well as all certificates which may have been in like manner deposited with himself, in the monthly ⁽²⁾ tabular statements which are herein before in the eleventh section of this Ordinance directed to be transmitted to the Secretary to Government, and affixed at or near such Resident Magistrate's public office.

* * * * *

SCHEDULE 3.

Authority for
issue from
private maga-
zine.

Form of permission by Resident Magistrate to authorize issue of gunpowder from Private Magazine ⁽³⁾.

I, —, Resident Magistrate of —, do hereby authorize [*the name of the applicant*] of [*the residence of applicant*] to receive from the store-keeper of [*describe the magazine*] — pounds of gunpowder, it having been made to appear to my satisfaction that such gunpowder is needed for a necessary and proper purpose.

Dated this — day of — 185—.

A. B., Resident Magistrate.

SCHEDULE 4.

Authority for
purchase of
guns, &c.

Form of certificate authorizing the purchase of guns, powder, &c.

I, —, do hereby certify that the bearer [*the name of the applicant*] of [*the residence of the applicant*] is to my knowledge a fit and proper person to obtain and have — pounds of gunpowder [*or a gun, or — pounds of lead*] which he requires for his own use. Dated this — day of — 185—.

A. B., Resident Magistrate
[or otherwise as the case may be.]

No. 14, 1857.]

[June 29th, 1857.]

* * * * *

Previous laws,
excepting the
repugnant
portion thereof,
to continue until
end of 1858.

1. The Ordinance No. 2, 1853, and the Act No. 19, 1856, and every provision of the said Ordinance and Act respectively shall except as in the next succeeding sections is excepted continue and be in force till

⁽¹⁾ Printed as amended by Act 11, 1875.

⁽²⁾ But see § 3 Act 29, 1879.

⁽³⁾ See Act 14, 1857, § 3.

the expiration of the year 1858 ⁽¹⁾, anything in the said Ordinance or Act to the contrary notwithstanding. No. 14, 1857.

3. It shall be lawful for any Resident Magistrate or Justice of the Peace entitled to grant any such permission as in the eighth section of the Ordinance aforesaid mentioned, should such Magistrate or Justice in the exercise of his discretion think it proper so to do, to grant to any person licensed to deal in gunpowder such a permission as is in the eighth section aforesaid mentioned to obtain at one and the same time any quantity of gunpowder not exceeding one hundred pounds weight thereof, and the form of permission set forth in schedule three of the said Ordinance shall be altered accordingly.

Resident Magistrate or Justice of the Peace may permit issues of 100lbs. of gunpowder from private magazines.

Form of permission.

4. It shall be lawful for such licensed dealer receiving and acting upon such permission as aforesaid to store at his warehouse or shop any quantity of gunpowder not exceeding one hundred pounds weight thereof, anything in the fifteenth section of the said Ordinance and in the twentieth section of Ordinance No. 7, 1834, to the contrary notwithstanding: Provided that every licensed dealer shall be bound to satisfy the Resident Magistrate of his district or some Justice of the Peace named by such Magistrate that the premises in which such dealer proposes to store or keep any such gunpowder are fit and proper for the purpose and not dangerous to the public safety.

Licensed dealer receiving such permission may have 100lbs. of gunpowder.

Provided it be safely stored.

5. It shall be lawful for any licensed dealer who shall have obtained one permission to obtain at one and the same time any quantity of gunpowder not exceeding one hundred pounds weight thereof to obtain another permission for another quantity of gunpowder not exceeding one hundred pounds weight thereof, and so on from time to time as circumstances shall require; in order that such licensed dealer shall be able, subject at all times to the discretion of the Resident Magistrate or Justice of the Peace as the case may be, to have always on hand for the purpose of his trade a moderate supply of both fine gunpowder and coarse gunpowder: Provided that no licensed dealer shall store, keep, or have any quantity of gunpowder of any description exceeding at any one time one hundred pounds weight thereof; and that all and singular the penalties mentioned in the fifteenth section of the Ordinance aforesaid, No. 2, 1853, shall apply to any licensed dealer who shall store, keep, or have at any one time any quantity of gunpowder exceeding one hundred pounds weight thereof, precisely as if the said fifteenth section in reference to the largest quantity of gunpowder which any licensed dealer might lawfully store, keep, or have at any one time had specified one hundred pounds weight thereof instead of fifty pounds weight thereof: Provided, also, that as often as any licensed dealer shall have obtained one such permission as aforesaid no second such permission shall be granted to him until he shall produce to and deposit with the Resident Magistrate or Justice of the Peace as the case may be certificates granted under the thirteenth section of the said Ordinance covering and accounting for a quantity of gunpowder equal to the quantity which such dealer shall desire a permission to obtain; and so on from time to time in regard to every subsequent permission which may be applied for: And provided that as often as the licensed dealer applying for any such permission as is in this section mentioned shall have disposed of all gunpowder obtained

Licensed dealer having a permission may receive a further one, to supply his trade in respect of different quantities of powder.

Not to have at any one time more than 100lbs.

Penalty imposed by § 15, Ordinance 2, 1853.

No second permission to be given unless upon production of certificates covering the disposal of an equal quantity under previous permission.

If quantity under any one permission be exhausted, § 17, Ord. 2, 1853, to apply to every fresh application

(1). Made perpetual by Act 28 of 1864.

No. 14, 1857.

Solemn declaration to be made..

by him under any previous permission the provisions of the seventeenth section of the Ordinance aforesaid shall apply to every such application, precisely as if the said seventeenth section instead of authorizing and relating to no permissions except permissions for fifty pounds weight of gunpowder had authorized and related to permissions for any quantity of gunpowder not exceeding one hundred pounds weight thereof : Provided, lastly, that as often as any licensed dealer shall make an application for a further supply of gunpowder whilst any portion of any gunpowder previously obtained by him shall be still in his possession, such dealer shall make a solemn declaration, which shall be in substance and effect as follows, that is to say :

I, A. B., of —, licensed dealer in gunpowder, do hereby solemnly and sincerely declare that I have not sold or otherwise disposed of to any person whomsoever, since the — day of —, 185—[*state the date of the "permission" last issued to such dealer*], any gunpowder whatsoever, except — pounds weight thereof, which said quantity of — pounds I have disposed of under and by virtue of the certificates now by me produced. And I further declare that I have not now in my possession any gunpowder whatever, except — pounds weight thereof.

(Signed) A. B.

Declared before me this — day of —, 185—.

C. D., Resident Magistrate,

[or Justice of the Peace, as the case may be]

Penalties for perjury to apply to false declaration.

6. If any person shall make any wilfully false statement in any such declaration as is in the last preceding section mentioned such person shall upon conviction incur the penalties by law provided for the crime of perjury.

Section 8, Ordinance No. 2, 1853, to extend to permissions issued under this Act and to gunpowder so obtained.

7. All and singular the several provisions of the Ordinance aforesaid which relate to the permissions in the eighth section of the said Ordinance mentioned and to the gunpowder obtained by virtue of such permissions, and which provisions are not repugnant to the provisions of this Act, shall extend and apply to the permissions authorised by this Act.

Certificate under § 13 of Ordinance No. 2, 1853, not transferable.

8. No person who shall have received from any Resident Magistrate or Justice of the Peace any such certificate as is in the thirteenth section of the Ordinance aforesaid mentioned shall deliver such certificate to any other person with intent that the gunpowder mentioned in such certificate should be obtained for the use of any person other than the person named in such certificate ; nor shall any person who shall have received any such certificate deliver the same to or leave the same with any licensed dealer without at the time [of such delivery or within three days thereafter removing from the premises of such dealer the gunpowder mentioned in such certificate. Any person contravening any of the provisions of this section shall upon conviction be liable to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any period not exceeding six months.

All gunpowder mentioned in such certificate to be removed within three days.

Penalty for contravention.

No. 13, 1878.]

[August 2nd, 1878.

Governor may by proclamation fix any district

1. It shall and may be lawful for the Governor aforesaid, by and with the advice of the Executive Council of the said colony, from time

to time to proclaim certain districts or portions of districts as areas within which it shall not be lawful for any person (except such persons as are hereinafter excepted) to bear, carry, or have in his or her possession, custody, or power, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition unless such person shall be licensed so to do as hereinafter provided: Provided, always, that any such proclamation may from time to time be revoked or repealed (either as to the whole or any part of any such proclaimed area) by the said Governor, by and with the advice aforesaid, when and as occasion may seem to justify such revocation or repeal.

No. 13, 1878.

within which no arms may be possessed without a licence.

Proclamation may be at any time revoked.

4. Every such proclamation shall name a certain day on or before which every person residing or being within the district or area therein specified, and not being a resident magistrate, justice of the peace, field-cornet, or person serving in Her Majesty's naval or military forces, or enrolled in any colonial corps, for the time being, whether burgher or volunteer ⁽¹⁾ or in the Frontier Armed and Mounted Police, or in any other armed police force legally constituted within this colony, not having a licence as in this Act provided, shall deposit and leave at the office of the resident magistrate of such district, or at such other place as may be named in the said proclamation for the deposit thereof, all arms and weapons, or portions of arms and weapons, and all bullets, cartridges, gunpowder, and other ammunition then being in his or her possession, custody, or power, and a receipt for the same shall be given by the person authorized to receive them to the person so depositing them.

Proclamation to fix day before which persons having arms, and not authorized to have them, shall deposit them with magistrate.

Receipt to be given for arms and ammunition deposited.

9. Every person resident or being within any district or area proclaimed as aforesaid, not being one of those excepted in the fourth clause of this Act, who shall be found carrying, or in possession of, any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, after the date named in the proclamation for the deposit thereof, may be required by any resident magistrate, justice of the peace, field-cornet, or police constable, or by any person producing his or her own licence under this Act, to produce and exhibit his or her licence for having or carrying such arms, weapons, bullets, cartridges, gunpowder, or other ammunition; and upon his or her refusal or inability so to do, such first mentioned person may be forthwith arrested without any warrant issued for that purpose, and upon being so arrested shall be taken with all reasonable speed before the resident magistrate of the district in which he shall be so found, or before the nearest justice of the peace, to be dealt with according to law.

All persons not specially excepted by 4th section found carrying or having arms may be required to produce licence.

In case of non-production may be arrested.

10. It shall and may be lawful for all resident magistrates, justices of the peace, field-cornets, and police constables, and they are hereby required so to do, upon reasonable suspicion that any person within any proclaimed district, or portion of a district, not being one of the persons hereinbefore excepted, and not being licensed under this Act, is in possession of any arms, weapons, bullets, cartridges, gunpowder, or other ammunition, to make diligent search for the same, and to seize any such arms; weapons, bullets, cartridges, gunpowder, or other ammunition, when found, without any warrant being issued or obtained for such search or seizure.

Certain officials to search for arms, &c., without warrant, on reasonable suspicion.

(1) Printed as amended by Act 4, 1879 § 1.

No. 2, 1878. 12. Everything contained in the 13th section of Ordinance No. 2 of 1853, which may be in conflict with, or repugnant to, the provisions of this Act shall be, and the same hereby is, so far as such conflict or repugnance may exist, but not otherwise, repealed. No person within any district or area proclaimed as aforesaid shall sell to, or make, mend, repair, or keep for any person (not being a person under the 4th section of this Act excepted or not being a person under the provisions of this Act licensed), any arms or weapons, or any portion of any arms or weapons, or any bullets, cartridges, or other ammunition: and no person within such district or area as aforesaid shall, under or by virtue of any sale, barter, gift, or other transaction, deliver to any person whomsoever unless a resident magistrate, justice of the peace, or field-cornet, any arms or weapons, or any portions of any arms or weapons, or any bullets, cartridges, gunpowder, or other ammunition, without production of his licence under this Act, and without a written permission for that purpose first had and obtained from the resident magistrate of the district within which it is proposed that such delivery shall take place, or from some other person authorized to issue licences under this Act for such district, which permission shall be, as nearly as may be in the form numbered 3 in the Schedule to this Act annexed. And any person guilty of contravening any one of the provisions in this section contained shall, upon conviction, be liable to imprisonment, with or without hard labour, for any period not exceeding seven years, or to pay a fine not exceeding five hundred pounds sterling, and to imprisonment with or without hard labour for a period not exceeding two years, unless such fine be sooner paid.

* * * *

No. 29, 1879.] [Sept. 11th, 1879.

Register to be kept of permits granted.

3. Every Resident Magistrate and Justice of the Peace now authorized to grant or issue permissions or certificates as aforesaid, under any law in that behalf in force, and every person authorized under the provisions of this Act to grant or issue such permissions or certificates, shall be bound to keep a register of the permissions and certificates granted by him, setting forth the names, addresses, and descriptions of the person to whom such permissions or certificates were granted or issued, and the dates of such permissions or certificates, together with the number and description of firearms, and the quantity of gunpowder, percussion caps, or lead represented in every such permission or certificate, and every person granting or issuing permissions or certificates as aforesaid, shall further be bound to transmit to the office of the Colonial Secretary, during the months of January and July, in each year, copies of such registries, certified under his hand.

* * * *

Hawkers' Licences.

No 20, 1884.]

[July 25, 1884.]

No. 6, 1843.

For Hawk⁽¹⁾ers—

To trade in one Division with or without one vehicle	£3	0	0
For each additional vehicle	1	0	0
To trade generally with or without one vehicle	10	0	0
For each additional vehicle	3	0	0

Tariff 15.
Annual li-
cences.

1. The above-mentioned licences shall either be written upon paper duly stamped, or shall have adhesive stamps of the proper value affixed to them before being issued. If adhesive stamps be used, they must be cancelled by writing thereon the initials of the officer issuing the licence, and the date on which he shall write the same, or in such other way as the Governor may from time to time direct.

2. All such of the above licences as are annual shall, no matter at what period of the year they may be taken out, expire on the thirty-first of December then next. When any such annual licence shall be issued upon or after the first of July, there shall be payable only one-half of the appointed sum. If taken out at any time before the first of July, there shall be no deduction.

3. It shall be lawful for any resident magistrate, justice of the peace, field-cornet, assistant field-cornet, excise officer, or chief constable, to demand from any person travelling in this colony as a hawker or trader, the production of his licence; and unless such person shall, on such demand, produce a licence duly stamped, and still in force, it shall be lawful for the person demanding the same to carry and convey the hawker or trader, with his goods, to the nearest resident magistrate, and such magistrate shall have jurisdiction to try the offender, although no act of trading may be proved to have been done within the district of such magistrate.

4. No hawker or pedlar shall obtain a licence until he shall produce to the officer authorised to issue such licence a certificate signed by some officer of police or by the chief constable, or by a justice of the peace for the division or district in which the said licence is applied for, that the applicant has resided within the said division or district for one month, and that he is, to the best of his knowledge and belief, a person of good character, and intends in good faith to carry on the trade of a hawker.

Health, Public.

No. 4, 1883.]

[Sept. 6th, 1883.]

J.P.s have jurisdiction under §§ 2, 19, 22, 23, 37, 38, and 48; but so have Special J.P.s; these sections will therefore be found under Special J.P.s *infra*.

Insolvent Estates.

No. 6.]

[October 24th, 1843.]

76. And be it enacted, that in all cases when, on the application of the Master of the Supreme Court, or any trustee or trustees of any

Recovery of
sequestrated
effects con-
cealed.

(¹) *Miselwitz v. Kimberley Borough Council* & High Court 397.

No. 1, 1838.

insolvent estate, it shall, on oath, be made to appear to the satisfaction of any Judge of the Supreme Court, or Resident Magistrate, or Justice of the Peace, that there is reason to suspect or believe that property of any insolvent is concealed in any house or other place not belonging to the insolvent, it shall and may be lawful to the said Judge, Magistrate, or Justice of the Peace, to grant a warrant to search for and take the said property; which warrant shall be executed in like manner as is by law allowed in execution of a search warrant for property reputed to be stolen and concealed: and any property of the insolvent so found shall forthwith be delivered if no trustee or trustees have hitherto been confirmed, to the Master of the Supreme Court, or otherwise, to the trustee or trustees who have been confirmed, or to any person appointed by the said Master, or trustee or trustees, to receive the same.

* * * *

Liquor Licensing.

No. 28, 1883.]

[September 27th, 1883.

* * * *

For §§ 28, 31, 32, 64, 81—83, 87; see under Special J.P.s Special Jurisdiction *infra*.

No. 42, 1887.]

[August 9th, 1887.

See under Special J.P.s *infra*.*Lord's Day Ordinance.*

No. 1.]

[March 22, 1838.

* * * *

Amusements
prohibited on
Lord's Day.

6. And be it enacted that the owner or occupier of any public billiard-room, skittle-ground, or other public place of amusement who shall permit or suffer any one to play in his house or premises at any game on the Lord's Day shall incur and be liable to a fine not exceeding ten pounds nor less than five shillings, or to imprisonment for any period not exceeding one month; and it shall be lawful for any Resident Magistrate, Justice of the Peace, Field-cornet, or police officer to disperse all persons gathering together on the Lord's Day in any public or open place for the purpose of gambling, fighting dogs or cocks, or playing at any game, and to take and seize any implements, instruments, or animals used therein, and to destroy or carry away the same; and all persons actually gambling, fighting dogs or cocks, or playing as aforesaid he shall arrest or cause to be arrested, and the said persons shall on conviction thereof be sentenced to a fine not exceeding three pounds nor less than five shillings, or to imprisonment with or without hard labour for any period not exceeding fourteen days.

* * * *

Masters and Servants.

No. 7, 1875.]

See under Special J.P.s Special Jurisdiction *infra*.

Military Deserters.

No. 1, 1870.

No. 1, 1870.]

ACT

[May 5, 1870.]

To Regulate the Apprehension within this Colony of Deserters from Her Majesty's Land Forces.

WHEREAS it is expedient that better provision be made for the apprehension of soldiers deserting from Her Majesty's land forces within this Colony: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Preamble.

1. The Ordinance No. 98 of the year 1833, intituled "An Ordinance for facilitating the Apprehension and regulating the Mode of Conveyance of Deserters from Her Majesty's Land Forces within this Colony to their respective Corps, and for the more prompt Payment of Rewards and Expenses consequent thereupon," shall be and the same is hereby repealed.

Ordinance No. 98, 1833, repealed.

2. It shall be lawful, upon reasonable cause of suspicion that a person is a deserter from Her Majesty's land forces, for any peace officer or constable, or, in the absence of such peace officer or constable, for any officer or soldier in Her Majesty's service or other person to apprehend or cause to be apprehended such suspected person and forthwith to bring him or cause him to be brought before any Resident Magistrate or Justice of the Peace living in or near the place where he may be so apprehended; and such Magistrate or Justice shall inquire whether such suspected person is a deserter, and may from time to time defer the said inquiry and may remand the said person in manner prescribed for preliminary examinations in the case of persons accused of crimes: And if it shall appear to the satisfaction of such Magistrate or Justice, by the testimony of one or more witnesses, or by the confession of such suspected person, confirmed by some corroborative evidence, or by the knowledge of such Magistrate or Justice, that such suspected person is a deserter from Her Majesty's land forces, such Magistrate or Justice shall forthwith cause him to be conveyed to and delivered into custody at some military post, if at a reasonable distance, or otherwise to some public prison; and such Magistrate or Justice shall in every such case forthwith transmit to the officer commanding Her Majesty's forces in this Colony a descriptive return in the form prescribed in the Schedule to this Act annexed, to the end that such person may in due course and with all reasonable speed be removed by order of such officer and proceeded against according to law. And such descriptive return shall, in the absence of proof to the contrary, be deemed sufficient evidence of the facts and matters stated therein, and such Magistrate or Justice shall also and at the same time send to the said officer a report stating the name or names of the person or persons by whom or by whose means the deserter was apprehended and secured; and the said officer shall thereupon cause to be transmitted to the said Magistrate or Justice an order for the payment to such person or persons of such sum not exceeding two pounds sterling, as such officer shall be satisfied he or they is or are entitled to according to the intent and meaning of the Mutiny Act in force for the time being, and of this Act; and any medical practitioner who in the absence of a military medical officer, may have been required to examine such suspected person and to give a certificate of such examination, shall

Authority for apprehending suspected deserters.

Proceedings of Magistrate or Justice of the Peace before whom suspected person is brought.

Reward for apprehension of deserter.

Fee for medical inspection of suspected person.

No. 1, 1870.

be entitled to a fee of five shillings upon his notifying the fact to such officer.

Gaoler re-
quired to receive
deserter, or
suspected de-
serter.

3. Every gaoler, or keeper of any gaol or other public place of confinement, is hereby required to receive and confine therein every person suspected of being or being a deserter who shall be delivered into his custody in the course of his transmission under the second section of this Act upon production of the warrant of the Magistrate or Justice before whom such person shall have been taken, or of some order of the officer commanding Her Majesty's forces in the Colony, which order shall continue in force until such suspected deserter shall have arrived at his destination; and every such gaoler or keeper shall be entitled to such subsistence money for the maintenance of such person as shall be directed by Her Majesty's regulations.

Inquiry to be
made to prevent
collusion be-
tween suspected
deserter and
person appre-
hending.

4. Every Resident Magistrate or Justice of the Peace before whom any suspected deserter shall be brought shall investigate the circumstances attending his apprehension, in order to ascertain whether or not there is reason to suspect the existence of collusion between such suspected deserter and the person by or through whose means he shall have been apprehended, or whether such apprehension has been made in good faith; and such Magistrate or Justice shall briefly set forth such circumstances in the return in the second section hereof mentioned.

SCHEDULE.

No. —.

Description Return of —, who was apprehended [*or surrendered himself, as the case may be*] on the — day of —, and was committed to confinement at —, on the — day of —, as a deserter [*or suspected deserter, as the case may be*] from [*insert Regiment or Corps*].

Age	..	..	..
Height	..	..	..	feet inches
Complexion	..	..	..
Hair	..	..	..
Eyes	..	..	..
Marks	..	..	..
Probable date of enlistment, and where	..	..	..
Probable date of desertion, and from what place				

No. 9, 1836.

(1) Name and occupation and address of the person by whom, or through whose means, the Deserter [<i>or suspected Deserter, as the case may be</i>] was apprehended and secured	
(1) Particulars in the evidence on which the prisoner is committed, and shewing whether he surrendered or was apprehended, and in what manner and upon what ground	

(1) It is important for the Public Service, and for the interest of the Deserter (or suspected Deserter, as the case may be), that this part of the Return should be accurately filled up, and the details should be inserted by the Magistrate or Justice, in his own handwriting, or under his direction by his clerk.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and that he has declared in my presence that he⁽¹⁾ a Deserter from the above-mentioned Corps.

Signature and address of the Magistrate or Justice.

Signature of the prisoner.

Signature of informant.

(1) Insert "is" or "is not," as the case may be.

I certify that I have inspected the prisoner and consider him⁽¹⁾ for military service.

Signature of the military medical officer, or of⁽²⁾ private medical practitioner.

(1) Insert "fit" or "unfit" as the case may be; and if unfit, state the cause of unfitness.

(2) No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it shall be shown that his services were not available.

Municipalities.

No. 9.] ORDINANCE [August 15, 1836.

For the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the Local Regulations of each shall be founded⁽¹⁾

WHEREAS it is expedient that due provision should be made for the better regulation of certain matters and things of a local nature within the several districts, towns, and villages in this Colony, and that

(1) Revived with Ordinance No. 2, 1844, by Ordinance No. 3, 1853, and made perpetual by Act No. 15, 1860. See 25, 1864, § 16. This Ordinance is repealed by Act No. 45, 1882, but is given here in view of the provisions of § 4 of that Act.

No. 2, 1896.

municipal boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, by, and with the advice and consent of the Legislative Council thereof, that from and after the first day of October next it shall and may be lawful for any Resident Magistrate or Justice of the Peace within the limits of his jurisdiction, and he is hereby required upon a requisition made to him in writing to that effect by any number of resident householders,⁽¹⁾ not less than twenty-five, and severally paying taxes to an amount exceeding six shillings sterling per annum, and resident respectively within one mile of any one central place which shall be specified in the said requisition, to call a meeting of householders paying such amount of taxes as aforesaid and resident within the limits aforesaid to determine whether municipal regulations shall be adopted for the town, village, or place intended to be erected into a municipality.⁽²⁾

Notice for
public meeting.

2. And be it further enacted that three weeks' notice at the least of the time and place of holding such meeting shall be given by the Resident Magistrate or Justice of the Peace calling the same by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

* * * * *

Meeting of
householders
for choosing
committee.

4. And be it further enacted that if at any such meeting it shall be determined by a majority of votes that municipal regulations shall be adopted, then and in such case any such Resident Magistrate or Justice of the Peace as aforesaid to whom such determination shall be notified by the chairman of such meeting shall forthwith call another meeting of such resident householders as aforesaid to be holden within seven days thereafter, in order to elect and appoint a committee of so many of such resident householders as aforesaid as the said meeting shall deem expedient to frame and draw up municipal regulations.

Committees
for framing re-
gulations.

5. And be it further enacted that the committee⁽³⁾ so to be elected and appointed shall be chosen by such resident householders assembled at such meeting by majority of votes.

Preparation of
regulations.

6. And be it further enacted that the committee so chosen as aforesaid shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same when prepared to a meeting of such resident householders as aforesaid to be called by the said committee upon seven days' notice to be given in manner aforesaid: Provided, always, that such committee shall submit such regulations to such meeting as aforesaid within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall then and in every such case be chosen in manner and for the purpose aforesaid, at a meeting to be called by any such Resident Magistrate or Justice of the Peace as aforesaid to whom such dissolution of the committee shall have been notified.

What shall be
embraced by the
regulations.

7. And be it further enacted that in such regulations it shall be the duty of such committee to fix the limits⁽⁴⁾ of the municipality and to divide the municipality into wards if necessary, and to fix the number

⁽¹⁾ As to qualification of householders, see § 6, Ord. 2, 1844, and § 7 Act 13, 1864.

⁽²⁾ See § 2, Ord. 2, 1844.

⁽³⁾ Stewart and others v. Uniondale Municipality 1. J. 346.

⁽⁴⁾ See Ord. 2, 1844, § 2.

of commissioners and wardmasters for the municipality or the several wards thereof, and to make rules for the classification and valuation of the immovable property therein, and to frame all other regulations which shall be necessary to enable the said commissioners to carry into effect the provisions of this Ordinance or such of them as the said committee shall think expedient and necessary for the municipality.

No. 9, 1836.

8. And be it further enacted that at the meeting to which such regulations as aforesaid shall be submitted by such committee any Resident Magistrate or Justice of the Peace residing at or near such proposed municipality shall preside as chairman: Provided, however, that such magistrate or justice shall not be a member of the said committee; and when there shall not be any such Resident Magistrate or Justice of the Peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid not being a member of such committee present at such meeting may be elected to preside as chairman at such meeting.

Chairman of meeting of householders.

9. And be it further enacted that at such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee *seriatim*, and afterwards on the whole of the regulations jointly; and a majority of votes shall decide whether such clause or the whole of the regulations jointly as the case may be shall or shall not be adopted.

How questions to be put to meeting.

10. And be it further enacted that the regulations adopted at such meeting shall forthwith be transmitted to the Governor of the Colony for the time being, for the approval, amendment, or disallowance thereof of the said Governor by and with the advice of the Executive Council; and in case such regulations shall be approved, notice of such approval shall be given by proclamation to be made in that behalf; and the said regulations shall be published in the *Government Gazette*, and shall thereupon become as legal, valid, and effectual as if the same had been inserted herein; and in the event of the said regulations being amended by the said Governor by and with the advice of the Executive Council, the regulations so amended shall be forthwith transmitted to the chairman of such meeting as last aforesaid, and in his absence to any Resident Magistrate or Justice of the Peace residing in or near the said intended municipality, who shall forthwith upon a notice of not less than seven days call a meeting of such resident householders as aforesaid, and who shall by a majority of votes decide whether the said regulations so amended shall be adopted or not; and if the regulations be adopted, the chairman of such meeting shall forthwith communicate such adoption to the said Governor, who shall forthwith give notice thereof by proclamation and cause the same to be published in the *Government Gazette*, and upon such publication the same shall become as legal, valid, and effectual as if the same had been inserted herein.

Approval of regulations by Governor.

11. And be it further enacted ⁽¹⁾ it shall be lawful for the Commissioners of any municipality, and they are hereby required upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid not less than twenty-five to call a meeting of such resident householders as aforesaid upon seven days' notice to be given in manner aforesaid for the purpose of adding to, amending, or repealing the existing regulations or any of them by

Alteration of regulations from time to time.

(1) *Vide* Ordinance 2, 1844, § 5.

No. 9, 1886.

a majority of persons present and entitled to vote at such meeting; and the said regulations after being so reformed shall be forthwith transmitted by the said Commissioners to the Governor for the approval or disallowance thereof or of any part thereof of the said Governor by and with the advice of the Executive Council; and such of the said reformed regulations as shall be approved of shall be published in the *Government Gazette* forthwith; and proclamation of such approval shall be made, and the said reformed regulations so approved of as aforesaid shall thereupon become as legal, valid, and effectual as if the same had been inserted herein, and the former regulations shall become null and void: Provided, always, that nothing in any municipal regulations contained shall be repugnant to or inconsistent with the true intent and meaning of the provisions of this Ordinance.

Election of
commissioners.

12. And be it further enacted that so soon as such original regulations as aforesaid shall have appeared in the *Government Gazette* the Resident Magistrate of the district shall and he is hereby required, by a notice of not less than ten days in manner herein before provided, to call a meeting of such resident householders as aforesaid residing within the limits of such municipality, to be holden for the election and choice of so many Commissioners as shall have been specified in the said regulations to carry the same into effect; and the said Commissioners for the municipality or the wards thereof respectively shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting, and any such Resident Magistrate or Justice of the Peace shall preside as chairman at such meeting.

Qualification
of Commis-
sioners.

13. (1) And be it further enacted that any person residing within the municipality and being the proprietor of a house situate within the same and who shall pay annually a sum of not less than one pound sterling in taxes shall be eligible to be elected a Commissioner for the purposes of this Ordinance, and shall be proposed at the said meeting by some person duly qualified to vote thereat and shall be seconded by some other person in like manner qualified.

Triennial re-
quirement of
Commissioners.

14. And be it further enacted that every person who shall be elected a Commissioner in any municipality in manner aforesaid shall go out of office at the end of the third year from the said first election; and in case of such Commissioners so going out of office a like number of other Commissioners to be elected as hereinafter provided shall come into office, and remain in office for three years; and at the expiration of such last-mentioned term of three years shall in like manner go out of office and be succeeded by other Commissioners, who shall remain in office for a like term of three years, and so on for ever: Provided, always, that any of such out-going Commissioners shall be re-eligible and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding.

Election to
supply triennial
vacancies in
commissioner-
ship.

15. And be it further enacted that on the Monday immediately preceding the day on which any such term of three years shall expire a meeting shall be holden at such hour and place as shall be duly notified by the said Commissioners for the election of Commissioners for the three years next succeeding, and such election shall proceed in such manner as is hereinbefore provided for the election of the first Commissioners under this Ordinance.

(1) See § 7, Ord. 2, 1844.

16. ⁽¹⁾ And be it further enacted that any Commissioner who shall cease to possess any of the qualifications in the thirteenth section required for the eligibility of Commissioners, or shall absent himself from the municipality for any period exceeding three months, or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease, shall *ipso facto* vacate his office; and that in case any person so elected a Commissioner shall die, or become disqualified in manner aforesaid, or shall resign or refuse to accept the office of Commissioner, or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting Commissioners to any such Resident Magistrate or Justice of the Peace as aforesaid, who shall forthwith in the manner hereinbefore directed by this Ordinance call a meeting of such resident householders as aforesaid for the purpose of filling up such vacancy or vacancies.

No. 45, 1882.

Vacating of
office by Com-
missioners.

17. And be it further enacted that the said Commissioners shall meet at such times as are specified in the municipal regulations respectively at some convenient place or office previously publicly notified; and at such meetings it shall be lawful for any person to appear there and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Ordinance or the municipal regulations.

Regular meet-
ing of Commis-
sioners.

* * * * *

41. And be it further enacted that if any person shall wilfully break, throw down, spoil, or damage any watch-house or watch-box, or lamp, lamp-iron, lamp-post, pole, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, or shall break, spoil, or damage any building the property in which is by the provisions of this Ordinance vested in the said Commissioners, or shall wilfully break or damage any public watercourse, bridge, sluice, dam, reservoir, pump, well, fountain, drain, or ditch, or shall wilfully waste any public water within the limits of any municipality, it shall be lawful for any person or persons who shall see the offence committed to apprehend and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this Ordinance and without any warrant to deliver him, her, or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable despatch to convey him, her, or them before the Resident Magistrate of the district within which any such offence shall have been committed or any Justice of the Peace having jurisdiction; and if the party accused shall be convicted of any such offence by such Resident Magistrate, he, she, or they shall forfeit severally any sum not exceeding two pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby.

Municipal pro-
perty, protection
of.

No 45, 1882.]

[June 30, 1882.

* * * * *

4. Notwithstanding the repeal of the laws hereby repealed, the said several laws shall be and continue in force and applicable to

Existing
Municipal Laws
to continue until

(¹) Amended by Act 13, 1884, § 4, and Act 9, 1885, § 2.

No. 2, 1837. every municipality already established as if this Act had not been passed until such municipality shall come under the operation of this Act, and as often as any existing municipality shall come under the operation of this Act, the following provisions shall apply :—

Provisions to apply to Municipalities coming under this Act.

- (1) All creditors of such municipality shall have the same rights and remedies as if this Act had not been passed.
- (2) All municipal regulations then in force in such municipality shall (unless repugnant to the provisions of this Act) continue in force, until altered or amended under this Act.
- (3) The councillors or commissioners, as the case may be, then in office, shall continue in office until the election and first meeting of councillors under the provisions of this Act.
- (4) All rates due or payable to or recoverable by such municipality shall be vested in and recoverable by the municipality newly constituted under this Act, and the valuation or assessment roll in use at such time, shall continue to be used until a new one shall be completed under the provisions of this Act.
- (5) All works and undertakings authorised to be executed, all rights, liabilities, and engagements existing, and all actions, suits, and proceedings pending by or against or in respect of such municipality, shall be vested in, attached to, and be enforced, carried on and prosecuted by or against the municipality newly constituted; and no such action, suit, or proceeding shall abate or be discontinued or prejudicially affected by such constitution.
- (6) All property, movable and immovable, and all moneys of or vested in any such municipality, shall be vested in and belong to the municipality newly constituted.

* * * * *

Native Passes.

No. 2.]

[June 21, 1837.

* * * * *

Native tribes not to enter the Colony with arms.

3. And be it further enacted that it shall not be lawful for any Kafir, Gonaqua, Tambookie, Griqua, Boschjesman, Bechuana, Mantatee, Namaqua, or other natives of Africa not being natives of the Colony to cross from without to within the boundary line of the Colony armed with any assegai, spear, battle-axe, fire-arms, or other weapon, or to be found in the Colony so armed; and all Justices of the Peace, field-commandants, field-cornets, and military officers are hereby authorized and required to prevent any such person as aforesaid so armed as aforesaid from entering the Colony, and to disarm or cause to be disarmed any such persons so found within the Colony; and in case such persons shall resist when an attempt is made to disarm them it shall be lawful to kill or disable them if they cannot be disarmed by other means: Provided, always, that nothing herein contained shall be construed to prevent any such foreigner as aforesaid actually in the service or employment of any inhabitant of the Colony from being armed in such manner as his employer may think proper.

4. (1) And be it further enacted that if any such foreigner as aforesaid shall be found within the Colony without a pass, or if under contract without a written authority from his employer, on being required by any Justice of the Peace, field-commandant, field-cornet, constable, or landholder to show the same, or after receiving a pass for the purpose of procuring employment in the Colony shall be discovered wandering without any certain occupation or honest means of livelihood having received his pass as aforesaid, or having been absent from his last employer for a longer period than fourteen days, then in any and in each of such cases it shall be lawful for any Justice of the Peace, field-commandant, or field-cornet immediately to apprehend such person and inquire summarily into the case, and for any constable or landholder immediately to apprehend and convey such person to the Resident Magistrate of the district or to any Justice of the Peace, field-commandant, or field-cornet within the district in which such person was so apprehended, who shall inquire summarily into the case, and if such foreigner be under contract of service shall forthwith direct him to be returned to the service of his employer, or shall place such person with his consent in the employment of some creditable inhabitant under contract of service for twelve calendar months in the manner directed by the Ordinance No. 49, or shall otherwise cause him to be removed beyond the limits of the Colony, resuming any pass that may be found in his possession, and notifying or causing to be noted such removal in the registry of the district wherein the pass was originally granted; and if any such foreigner as aforesaid so removed beyond the limits of the Colony shall return again and be found wandering within the same, such person shall on conviction thereof be sentenced to imprisonment with hard labour for any period not exceeding twelve calendar months.

No. 2, 1897.
Natives not to
be without
passes.

5. And be it further enacted that when any officer of the law or private person who in virtue of the provisions of this Ordinance is authorized and required to arrest or remove or to assist in arresting or removing any such foreigner as aforesaid shall attempt to make such arrest or removal, and such foreigner so attempted to be arrested or removed shall resist, it shall be lawful for such officer or person if such arrest or removal cannot be effected by other means to kill or disable such foreigner so resisting as aforesaid.

Arrest of
natives.

6. And be it further enacted that if any body of such armed foreigners as aforesaid, consisting of three or more, shall enter the Colony under any pretext whatever, they shall be deemed and taken to be enemies, and it shall be lawful for any person to repel them by force of arms.

Armed natives
entering the
Colony in
numbers to be
deemed enemies.

7. And be it further enacted, that every male inhabitant between the ages of sixteen and sixty, who shall be called upon by any officer of the law to assist in carrying into effect any of the provisions of this Ordinance, or of the said Ordinance No. 73, which it is the duty of any such officer to carry or cause to be carried into effect, and who shall, without sufficient excuse, refuse so to do, shall on conviction thereof be liable to a fine of not less than one pound nor exceeding twenty pounds or to imprisonment for any period not exceeding three months.

All persons to
aid officers of
law.

(1) See Act 22 of 1867, §§ 3 and 8.

No. 17, 1864. No. 17, 1864.]

[July 26, 1864.]

Certificate of Citizenship.

Fingo not producing certificate may be lawfully apprehended.

No certificate the date of issue or countersignature of which shall be more than thirteen months before the day of inspection to be valid.

20. If any Fingo who shall have neglected to supply himself with, so as to be able to produce, such a certificate of citizenship as aforesaid shall be apprehended by any Justice of the Peace, Field-cornet, constable, or landowner, acting in pursuance of the twelfth section of the Ordinance No. 49⁽¹⁾, such last-mentioned person acting *bond fide* without malice, and having reasonable and probable cause for mistaking such Fingo for a Kafir without a pass, such Fingo shall be deemed and taken to have been lawfully apprehended, and shall not be entitled to have or maintain any action or suit, civil or criminal, against the person by whom he shall have been so apprehended: Provided that no certificate of citizenship of which the latest date mentioned therein or thereon, whether the date of its issue or the date of its being last countersigned, shall be more than thirteen months before the day on which the same shall be produced for inspection to such Justice of the Peace, Field-cornet, constable, or landowner as aforesaid, shall be deemed and taken to be a certificate of citizenship, or to be evidence to any extent that the person producing it is a Fingo and not a Kafir without a pass.

No. 22, 1867.]

[Aug. 16, 1867.]

Who may demand production of pass.

On failure or refusal to produce pass, native foreigner may be apprehended.

Certificate issued under Act 17 of 1864 to hold good.

Annual revision and renewal of certificates not necessary.

Penalty on wrongful arrest.

8. It shall be lawful for any Justice of the Peace, officer of police, field-cornet, constable, or any owner or occupier of land to demand of any such native foreigner the production of his pass; and if any such native foreigner shall fail or refuse to produce the same and show that he is acting in conformity with the conditions thereof, then it shall be lawful for such Justice of the Peace, officer of police, field-cornet, constable, owner or occupier of land to apprehend such native foreigner, and to convey him, or cause him to be conveyed, before the Resident Magistrate of the district, to be dealt with according to law.

9. No Fingo or other person who shall be lawfully in possession of, and shall, when required to do so by any officer named in the preceding section hereof, produce a certificate issued under the provisions of the Act No. 17 of 1864, shall be liable to be apprehended by reason of his not possessing a pass to enter the Colony in conformity with the third section hereof.

10. So much of the hereinbefore-mentioned Act No. 17 of the year 1864 as relates to the annual revision and renewal of certificates shall be, and the same is hereby repealed, and every certificate of citizenship which shall have been or shall be hereafter issued in conformity with the provisions of the said Act shall be and continue of full force and effect, notwithstanding that the same shall not have been revised or renewed, so long as the same shall lawfully remain in the possession of the person to whom it shall have been issued.

12. Any one who shall, under colour of this Act, wrongfully and maliciously and without probable cause, arrest, or cause to be arrested,

(¹) Repealed by Act No. 22, 1867.

any person, shall be liable to pay a fine not exceeding one pound sterling, and to pay to the arrested person such amount, as and for damages, as the magistrate before whom such arrested person is brought for trial shall award. No. 36, 1889.

SCHEDULE A.

Pass granted under Act No. — of 1867.

No. — Time allowed ——— days.

Permission is hereby granted to A. B., of ——— tribe, to enter the Colony of the Cape of Good Hope for the purpose of ———.

This pass to protect A. B. in proceeding to and returning from (name the district or place), provided he does so within ——— days, and to and from such other place and for such further time as the resident magistrate of such district shall, by endorsement hereon, authorize; provided the said A. B. shall comply with all the conditions stipulated for and expressed in such endorsement; provided, also, that no stock shall be removed by him without a written authorization to that effect, and that this pass shall be endorsed by the Magistrate, Field-cornet, or other officer to whom the bearer is directed.

Description of A. B.

Name,
Father's name,
Head of village,
Sex,
Age (about)
Height,
Marks (if any)

Particulars of family and stock (if any)

This certificate was issued by me ——— at ——— on the ——— day of ——— 186—.

Pawn Brokers.

No. 36, 1889.]

[Aug. 13th, 1889.

* * * * *

26. The following provisions shall have effect for protection of owners of articles pawned, and of pawners not having their pawn-tickets to produce: Protection of owners and of pawners not having pawn-tickets.

- (1) Any person claiming to be the owner of a pledge but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration, which the pawnbroker shall deliver to him:
- (2) If the applicant delivers back to the pawnbroker the declaration duly made before a Justice of the Peace by the applicant, and by a person identifying him, the applicant shall thereupon have, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawn-ticket: Provided that such a declaration shall not be

No. 36, 1889.

effectual for that purpose unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day of which the form is delivered to the applicant by the pawnbroker (exclusive of a day or days on which the pawnbroker is prohibited from carrying on business):

- (3) The pawnbroker is hereby indemnified for not delivering the pledge to any person until the expiration of the period aforesaid:
- (4) The pawnbroker is further hereby indemnified for delivering the pledge or otherwise acting in conformity with the declaration, unless he has actual or constructive notice that the declaration is fraudulent or false in any material particular.

If any person makes a declaration under this Act, either as an applicant or as identifying an applicant, knowing the same to be false in any material particular, he shall on conviction be liable to the punishment attaching by law to perjury.

* * * * *

IV.—DECLARATION WHERE PLEDGE CLAIMED BY OWNER.

TAKE NOTICE if this declaration is false the person making it is punishable as for perjury.

Unless this printed form is taken before a Justice of the Peace and declared to and signed and delivered back to the pawnbroker not later than the day of _____, the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A. B.*, of _____, in pursuance of the Pawnbrokers' Act, 1889, do solemnly and sincerely declare that the article [*or articles*] described below is [*or are*] my property, and that I believe they are pledged at the shop of _____

The article [*or articles*] above referred to is [*or are*] the following:—

And I, *C. D.*, of _____, in pursuance of the same Act do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A. B.* of _____

Declared before me, this _____ day of _____, 18____,
E.F., Justice of the Peace.

V.—DECLARATION WHERE PAWN-TICKET LOST, &c.

TAKE NOTICE if this declaration is false the person making it is punishable as for perjury.

Unless this printed form is taken before a Justice of the Peace and declared to and signed and delivered back to the pawnbroker not later than the day of _____, the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A. B.*, of _____, in pursuance of the Pawnbrokers' Act, 1889, do solemnly and sincerely declare that _____ pledged at the shop of _____ pawnbroker, the article [*or articles*] described below being _____ property, and received a pawn-ticket for the same, which has since been _____ by _____ and that the pawn-ticket has not been sold or transferred to any person by _____ or to _____ knowledge or belief.

The article [*or articles*] above referred to is [*or are*] the following : No. 12, 1882.
 And I, *C. D.*, of _____, in pursuance of the
 same Act, do solemnly and sincerely declare that I know the person
 now making the foregoing declaration to be *A.B.* of _____
 Declared before me, this _____ day of _____ 18 ____
E. F., Justice of the Peace.

Police.

No. 12, 1882.]

[June 21, 1882.]

* * * * *

31. If any person who having been a member of the force had been dismissed or who has otherwise ceased to be a member of the force, shall not forthwith deliver up everything which may have been supplied to him for the execution of his office, or which may be in his custody by virtue thereof to such person as may be appointed by any order issued by any commissioner, such first⁽¹⁾ mentioned person shall upon conviction be liable to be imprisoned with or without hard labour for any period not exceeding three months; and any Justice of the Peace may and shall issue his warrant to search for and seize any arms, ammunition, accoutrements, horses, saddles, bridles, clothing, and other things whatsoever which shall not be so delivered wherever the same shall be found.

Penalties for
members of
force not giving
up articles so
supplied to them
when retiring or
being dismissed.

No. 27, 1882.]

[June 29, 1882.]

* * * * *

13. The local authority or any Resident Magistrate or Justice of the Peace, may authorize any police officer or constable from time to time to visit and inspect any butchers' shambles, slaughter-house, or yard, or any house, out-building, lane, alley, or other place, for the purpose of ascertaining if the same be kept cleansed; and such person so authorized shall, if it appear that any accumulation of manure, dung, offal, soil, filth, or other unwholesome or noxious matter ought to be removed, give notice to the person to whom the same belongs, or to the occupier or person in charge of the premises whereon it exists to remove the same; and if at the expiration of four days after such notice the same be not complied with, such owner, occupier or person in charge shall, upon conviction, be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day after conviction during which such notice shall not be complied with; or in default of payment to be imprisoned with or without hard labour for a period not exceeding three months in respect of every penalty imposed unless the penalty be sooner paid.

Nuisance in
private build-
ings, lanes, &c.,
provided
against.

Port and Quarantine.

No. 16, 1857.]

[June 29, 1857.]

* * * * *

19. The master of every merchant vessel arriving in a port of this Colony shall upon demand produce and show the ship's register and ship's papers to the port-captain, or Resident Magistrate, or Justice of the Peace, as the case may be, for his inspection; and shall deliver a

Ship's papers,
&c., to be pro-
duced.

⁽¹⁾ Printed as amended by § 6, Act 31, 1883.

- No. 16, 1857. list of his passengers, with a description of their rank, sex, and occupation, together with a list of any deaths or removals that may have occurred during the voyage, and shall report in writing if any person or persons should have stowed themselves away or concealed themselves on board of such vessel without his knowledge or consent; and any master not duly accounting for every individual aforesaid, or falsely accounting for any of them, or refusing to deliver the list when thereunto required as aforesaid shall forfeit for every such offence the sum of fifty pounds.
- Penalty.
- Public mails, &c., to be delivered. 20. ⁽¹⁾The master of every merchant vessel arriving as aforesaid shall deliver all public mails intrusted to him for delivery in the Colony to the port-captain, Resident Magistrate, or Justice of the Peace at the time of his vessel being boarded by such officer, under a penalty of twenty pounds for every mail box, bag, or parcel which he may neglect or refuse so to deliver; and he shall at the same time deliver, in order that they may be transmitted to the post-office, all letters placed in his charge for delivery in this Colony, whether in packages or loose, with the exception only of letters addressed to owners, freighters, or consignees of the vessel and of letters addressed to be delivered with goods brought by the vessel to the consignees of such goods; and in case he neglect or refuse so to do he shall forfeit for every such letter so unlawfully retained a sum not exceeding two pounds.
- Penalty.
- The like bond at other ports. 26. The master of any vessel arriving at any port or place in this Colony other than the ports aforesaid shall if required thereunto by the Resident Magistrate, Justice of the Peace, or other local officer as aforesaid or by any person duly authorized by him, give like bond at the respective office or residence of said officers in the like sum, and shall in case of refusal be subject to the like forfeiture as is provided in respect of the ports of Cape Town, Simon's Town, and Port Elizabeth respectively.
- Deaths on board to be reported. 30. In the event of the death of any of the crew, passengers, or other persons occurring on board of any merchant vessel whilst remaining in any of the ports of this Colony the master of such vessel shall forthwith report the same in writing to the Resident Magistrate, if in the ports of Cape Town, Simon's Town, or Port Elizabeth, or to the Justice of the Peace at other ports, as the case may be; and any master failing so to do shall forfeit the sum of five pounds for every death which may not have been so reported.

No. 4, 1883.]

[Sept. 6, 1883.]

For §§ 1, 22, 37, and 48 see full text—under Special J.P.s Special Jurisdiction—"Public Health," *infra*.

(¹) See also §§ 38, 39, Act 4 of 1882 [Post Office] *infra*.

Post. Office.

No. 4, 1882.]

[June 7, 1882.]

No. 4, 1882.

38. All mails and every loose letter, post card, packet, or newspaper which at the time of the arrival of any vessel in any port of this Colony shall be on board thereof directed to any person in this Colony, shall be delivered on demand to any postmaster or port officer of such port or to any person duly authorised in their behalf by writing under the hand of the Postmaster-General or officer in immediate charge of the Post Office, except letters concerning goods on board such vessel and to be delivered with such goods, or sent by way of introduction only, or concerning the bearer's private affairs. And any person who shall knowingly or negligently detain, or keep in his possession, or shall neglect or refuse to deliver any mail bag, mail box, or mail parcel, or any letter, post card, packet, or newspaper (except as aforesaid) after such demand made as aforesaid, shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.⁽¹⁾

Letters arriving by ship to be delivered to Post Office.

Penalties for omitting to make such delivery.

39. The master or person in charge of any vessel arriving at any port in this Colony shall, as soon as practicable after such arrival, sign in the presence of the postmaster or other officer appointed by the Postmaster-General to receive the same at such port or the town or place nearest thereto, a declaration in the form set forth in the third schedule to this Act, and thereupon such postmaster or officer shall grant a certificate under his hand of the making thereof; and until such certificate shall have been delivered to the proper officer of Customs at such port he shall not permit such vessel to report. And any master or person in charge as aforesaid who shall fail or refuse to make such declaration or who shall make a false declaration shall upon conviction be liable to pay a penalty not exceeding one hundred pounds.

Master of ships to sign declaration in schedule 3.

44. Every postmaster and other post officer shall, before the exercise by him of the duties of his office, take and subscribe before a Justice of the Peace a solemn declaration, which every Justice of the Peace is hereby authorised and required to administer, in the form in the fourth schedule to this Act.

Solemn declaration to be made before J.P. by each postal officer.

FOURTH SCHEDULE.

Declaration

(Made pursuant to the provisions of the 44th Section of the "Post Office Act, 1882.")

I _____ do solemnly and sincerely declare that I will not wittingly or willingly open or delay, or cause, or suffer to be opened or delayed, contrary to my duty, any letter or anything sent by the post, which shall come into my hands or custody, by reason of my employment relating to the post office, except by the consent of the person or persons to whom the same shall be directed, or except in

⁽¹⁾ See also § 20, Act No. 16, 1857.

No. 16, 1847.

such cases where the party or parties to whom such letter, or anything sent by the post shall be directed, and who is, or are, chargeable with the payment of the postage thereof, shall refuse or neglect to pay the same; and except such letters or anything sent by the post, as shall be returned for want of true directions, or when the party or parties to whom the same shall be directed, cannot be found; and that I will not in any way embezzle any such letter or anything sent by the post as aforesaid; and I make this solemn declaration conscientiously intending to fulfil and obey the same; and by virtue of the provisions of the Ordinance No. 6, 1845, entitled "An Ordinance for substituting declarations in the place of certain oaths and for the suppression of voluntary and extra-judicial Oaths and Affidavits."

Declared before me, at

this day of

188

*Pounds and Trespases.*No. 16, 1847.](¹)

[July 24, 1847.

* * * * *

Destruction of
animals having
contagious dis-
orders.

11. And be it enacted that it shall and may be lawful for every poundmaster to destroy or cause to be destroyed or impounded animals affected with any contagious disorder or such as may from any cause be found so furious and ungovernable as to endanger the lives of human beings or to be obviously destructive to other animals impounded: Provided that no animal however diseased or dangerous shall be destroyed until the Justice of the Peace nearest to the pound in which such animal shall be confined, or in case he shall be absent from his residence or shall reside at a greater distance than twelve miles the nearest Field-cornet, or in case he shall be absent from his residence or shall reside at a greater distance than six miles two disinterested landowners (not living or jointly occupying with the poundmaster requiring their attendance), shall have examined the animal proposed to be destroyed and shall agree with the poundmaster regarding the necessity of such destruction; and every Justice of the Peace, Field-cornet, or landowner attending for the purpose of any such inspection shall be paid by such poundmaster horse-hire at and after double the usual tariff-rate, which shall be recoverable from the owner of the animal should the same be destroyed; but should the same not be destroyed or should such animal be destroyed and the owner thereof be unknown then the amount of such horse-hire shall be paid to such poundmaster by the Colonial Treasury; and provided that the owner of every such animal when known to such poundmaster shall be summoned in writing by such poundmaster to attend such examination as aforesaid (and for serving such summons the poundmaster may recover from such owner horse-hire at the usual tariff-rate), and in case such owner shall attend such inspection and object

Notice of
disease by
poundmaster to
Justice of the
Peace, field-
cornet, &c.

Payment of
horse-hire to
Justice of the
Peace, &c.

(¹). The provisions of this Ordinance extended to domesticated ostriches by Act 31, 1875.

to the destruction of the said animal such owner shall be entitled to release such animal from the pound in case he shall release the same forthwith and shall at the same time release also all other animals belonging to him (if any) impounded at the same time with the animal proposed to be destroyed; provided, also, that no sheep affected merely with the disease commonly called *brandtsiekte*, or goat with the disease called the scurvy, shall be destroyed unless with the owner's consent, nor shall any such examination as aforesaid be had recourse to in regard to such sheep or goat.

No. 1, 1869.

27. (1) And be it enacted that every Magistrate, Justice of the Peace, Field-cornet, assistant Field-cornet in any division or any person authorized in writing by any of the said persons may send to the nearest accessible pound (2) all animals which shall be found upon any outspan-place in such division not being in the possession of travellers outspanning there, or which being in the possession of such person shall be outspanned there for more than twenty-four successive hours, unless such person shall be detained by floods or some other sufficient cause; and when and as often as any such person as aforesaid takes or sends any such animals to the pound he shall be entitled to receive the mileage as hereinbefore provided.

Trespass on outspan places.

46. And be it enacted that nothing in this Ordinance contained shall be construed so as to prevent any person complaining of trespass from seeking redress according to law in any competent Court; but no person who shall once have claimed damages under the thirty-second and thirty-third sections of this Ordinance shall be competent afterwards to require an assessment by Field-cornet and landowners, nor shall any person who shall once have claimed either such damages or such assessment be competent afterwards to seek redress by legal process; and whenever any complainant shall be minded to proceed at law for the recovery of damages for an alleged trespass, the owner of the cattle impounded for or on account of such trespass shall be entitled to release the same upon payment of pound fees and upon giving security to the satisfaction of any Resident Magistrate or Justice of the Peace or Field-cornet for the payment of any damages or costs which the complainant may recover: Provided, always, that every such owner shall be entitled to tender to every such complainant such sum as he may consider adequate to cover and satisfy such damages as aforesaid, and in the event of such tender being refused the complainant shall be condemned in the costs of all such legal proceedings as he may afterwards institute unless the Court in which the same shall be pending shall find that such damages exceeded the amount so tendered.

Effect of claim for damages on assessment by field-cornet, and of such claim on action at law.

Release of animals on security pending action.

Tender.

Pounds and Trespases.

No. 1, 1869.]

[October 18, 1869.

5. The owner of any stallion which may hereafter be impounded shall be entitled to release such stallion without its being castrated,

When impounded stallion may be released without being castrated.

(1). Any road inspector in the service of a Divisional Council, or other person specially authorized by resolution of such council may exercise the powers conferred in this section on J.P.s, &c., § 5 Act 29, 1889.

(2). *Arendt v. Van der Vyver* 2 E.D.C. 81.

No. 9, 1846.

upon payment of pound fees and other charges, and upon giving security, to the satisfaction of any Resident Magistrate or Justice of the Peace or Field-cornet, for the payment of any fine or penalty and costs of suit recoverable under the fifty-first and fifty-fifth sections of the said Ordinance⁽¹⁾: Provided, always, that every such owner shall be entitled to tender to any person claiming any penalty under the sections aforesaid such sum as he shall consider adequate to cover such fine or penalty as aforesaid; and in the event of such tender being refused, the person claiming any such fine or penalty shall be condemned in the costs of such legal proceedings as he may afterwards institute for the recovery thereof, unless the court in which the same shall be pending shall award such fine or penalty as shall exceed the amount so tendered.

Word "stallion" to include male ass.

8. The word "stallion" shall include a male ass not castrated.

Roads.

No. 9, 1846.]

[February 28, 1846.

Manner of proceeding when offender cannot at once be taken before Magistrate.

21. And be it enacted that when and as often as any person witnessing or discovering any contravention as aforesaid shall by reason of distance or other impediment find it impossible or deem it inexpedient to require any such wagon, cart, or other carriage to proceed to any Resident Magistrate or Road Magistrate, and in every case in which the residence of the nearest Resident Magistrate or Road Magistrate shall be distant three miles or upwards from the place at which any such contravention as aforesaid shall be witnessed or discovered, and there shall be nearer than the nearest Resident Magistrate or Road Magistrate any Justice of the Peace, Field-cornet, or gaoler, the person so witnessing or discovering any such contravention as aforesaid may require and compel such wagon, cart, or other carriage to proceed to whoever of the last-mentioned persons can be most conveniently reached, and such Justice of the Peace, Field-cornet, or gaoler is hereby authorized and empowered at his discretion either to detain the said wagon, cart, or other carriage with the oxen or other cattle thereto belonging for any period not exceeding twelve hours, in order that during that period the case concerning it or them may be disposed of by some Resident Magistrate or Road Magistrate should it be practicable so to do, or such Justice of the Peace, Field-cornet, or gaoler may in case the owner of such wagon, cart, or other carriage shall be in charge of or with the same take, but without fee or reward and as near as may be in the form in the fifth schedule to this Ordinance set forth, the bond, obligation, or recognizance of such owner with or without sureties as may be thought fit, conditioned for the appearance of such owner before any Resident Magistrate whom the said owner and the person complaining shall agree to have inserted, and in case they shall not so agree then before the Resident Magistrate whom the Justice of the Peace, Field-cornet, gaoler, or constable shall under the circumstances deem the most convenient, upon some convenient day to be after consulting such owner and person complaining fixed by the Justice of the Peace, Field-cornet, or gaoler, and

Bond for appearance of owner before Magistrate.

(¹) No. 16, 1847.

which day shall be mentioned in such bond, obligation or recognizance, then to answer the charge to be preferred against him; and upon such owner entering into such bond, obligation, or recognizance the wagon, cart, or other carriage in question and the oxen used for drawing the same shall be allowed to depart; but if in any case the owner of such wagon, cart, or other carriage brought as aforesaid to any Justice of the Peace, Field-cornet, or gaoler should not in person be in charge of or present with the same, then in place and stead of taking such bond, obligation, or recognizance as aforesaid such Justice of the Peace, Field-cornet, or gaoler shall and may detain the alleged offender to answer the charge against him, provided his so doing would not have the effect of depriving any wagon, cart or other carriage of a person necessary for the safe conduct of the same; but if such detention would have such effect such Justice of the Peace, Field-cornet, or gaoler shall and may seize and detain and if he shall think fit forward to and place in the nearest public pound such a number of the oxen or other cattle belonging to such wagon, cart, or other carriage as he shall deem sufficient to meet and satisfy any fine, penalty, or forfeiture which may be imposed for or in respect of the charge preferred, or should it be practicable shall seize and detain instead some property, matter or thing in, upon or belonging to such wagon, cart, or other carriage, and shall then permit and suffer such wagon, cart, or other carriage to depart, having first delivered a written statement to the owner or person in charge thereof of the day on which the case will come on to be investigated in and by the Court of the Resident Magistrate.

No. 2, 1846.

Detention of
offender in
default of bond.or seizure of
sufficient pro-
perty.

22. And be it enacted that in every case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, or Field-cornet, or gaoler, such Justice of the Peace, Field-cornet, gaoler, or constable shall take down in writing the name and residence of every person bringing the same or causing the same to be brought, and may require every such person to enter into a bond, obligation, or recognizance with or without sureties and as near as may be in the form in the sixth schedule to this Ordinance set forth, to appear and give evidence in the Court of the Resident Magistrate, or in case such Justice of the Peace, Field-cornet, or gaoler shall propose to detain the wagon, cart, or other carriage with the oxen or other cattle as aforesaid in order that the case may be brought before any Road Magistrate then before such Road Magistrate touching and concerning such alleged offence; and in case no sufficient security either personally or by sureties shall when required be given by some person or persons so to appear and give evidence the wagon, cart, or other carriage shall unless the matter complained of in regard thereto shall be apparent upon the view thereof and the Justice of the Peace, Field-cornet, or gaoler shall himself think fit to prosecute be permitted to pursue its journey.

Provision for
appearance of
complainants on
day of trial.

23. And be it enacted that if in any case in which any wagon, cart, or other carriage shall be brought as aforesaid to any Justice of the Peace, Field-cornet, or gaoler it shall appear to such Justice of the Peace, Field-cornet, or gaoler that the complaint made is groundless and vexatious the person preferring the same and neglecting to give sufficient security personally or by sureties to appear and give evidence as aforesaid may upon the request of the owner or person in charge of

Proceedings on
frivolous and
vexatious com-
plaints.

No. 9, 1846.

the wagon, cart, or other carriage in question be detained in custody until he shall be brought up before the Court of the Resident Magistrate, such owner or person in charge in his turn giving security to appear and give evidence in the said Court or in person abiding in order so to do when the said person or persons shall be brought before the same, which shall be as soon as reasonably may be.

Penalty on such complaints.

24. And be it enacted that any person who shall to any Resident Magistrate, Road Magistrate, Justice of the Peace, field-cornet, or gaoler prefer by virtue or under pretext of this Ordinance any groundless and vexatious complaint against any other person or any wagon, cart, or other carriage shall in addition to any civil action to which he may render himself liable forfeit upon conviction any sum not exceeding forty shillings.

Transmission of bonds for appearance to Magistrate.

25. And be it enacted that in every case in which any Justice of the Peace, field-cornet, or gaoler shall take from any such owner as aforesaid (whether resident in the district in which any alleged offence shall have been witnessed or discovered or not) any such bond, obligation, or recognizance as aforesaid he shall forthwith forward the same to the Resident Magistrate mentioned therein, together with the name and residence of every person complaining as aforesaid, as also any bond, obligation, or recognizance which may have been entered into by any such last-mentioned person to appear and give his evidence in the Court of the Resident Magistrate at the time fixed in the bond, obligation, or recognizance of such owner as aforesaid for the hearing of the case.

Report of detention of cattle, &c., to Magistrate.

26. And be it enacted that in every case in which any oxen or other cattle or any property, matter, or thing shall have been detained or impounded under and by virtue of provisions in that behalf hereinbefore set forth by any Justice of the Peace, Field-cornet, or gaoler, such Justice of the Peace, Field-cornet, or gaoler shall transmit forthwith to the Resident Magistrate a report of what has been done in that behalf, mentioning the day named by him to the parties for the hearing of the case together with the name and residence of and the other matters and things concerning every person complaining in manner and form as in the last clause of the last preceding section mentioned and set forth.

Duty of Magistrate to sit for hearing of case on day fixed.

27. And be it enacted that it shall be the duty of every Resident Magistrate to whom any such bond, obligation, or recognizance as aforesaid or any such report as in the last preceding section mentioned shall be transmitted by any Justice of the Peace, Field-cornet, or gaoler to sit for the hearing of the case to which it relates upon the day which has been specified for the hearing of the same, and thereupon in the presence of the parties interested should both attend or in the absence of such of them if any as may make default to pronounce such judgment as shall to justice appertain.

Excursion of property detained on conviction of owner.

28. And be it enacted that if the Court of the Resident Magistrate shall see cause to convict any owner in any case in which it shall have been reported as aforesaid that any oxen or other cattle or any property, matter, or thing seized and detained have been detained and impounded as aforesaid by any Justice of the Peace, Field-cornet, or gaoler, the said oxen or other cattle shall and may be excused in satisfaction of the judgment: Provided, always, that the pound fees or charges due and payable thereon shall be first deducted from the

amount for which any such oxen or other cattle shall be sold; and that there shall next be deducted the expense of sending the same to pound by such Justice of the Peace, and that in case there shall then remain any surplus after deducting the fine, penalty, or forfeiture imposed such surplus shall be paid over to such owner.

No. 9, 1846.

30. And be it enacted that nothing in this Ordinance contained shall be construed so as to make it imperative or necessary for any person witnessing or discovering any contravention of this Ordinance to require the wagon, cart, or other carriage by or by means of which such contravention shall have taken place to proceed at once to any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, gaoler, or constable as aforesaid, but that such person may should he so think fit prosecute or cause to be prosecuted the party offending before any Court of Resident Magistrate which such person shall select: Provided, however that no summons shall be issued by any such Court in any case until such person shall have deposed on oath to the fact or facts charged to be or to have been such a contravention as aforesaid; and provided, also, that no person shall be summoned to appear before any such Court other than that of the district in which he resides, except such Court shall be appointed to be holden within the distance of twenty-miles of such residence.

Prosecuted by summons.

at the District Court or Court within twenty miles of offender's residence.

33. And be it enacted that if any person being in charge of any wagon, cart, or other carriage, whether the owner thereof or not shall in any case in which he shall be required to proceed to any Resident Magistrate, Road Magistrate, Justice of the Peace, field-cornet, or gaoler under and by virtue of either the twentieth or twenty-first sections of this Ordinance resist or refuse so doing or make any undue or unnecessary delay in so doing, such person shall forfeit upon conviction any sum not exceeding five pounds: Provided, always, that the said forfeiture shall in no case attach or be inflicted except where it shall be proved that some one or more of the provisions of the second, third, or fourth sections of this Ordinance were actually contravened in the view of the person requiring the wagon, cart, or other carriage contravening the same to proceed as aforesaid.

Penalty on refusal to proceed to Magistrate as required under 20th and 21st sections.

35. And be it enacted that it shall and may be lawful for any person in whose presence any such offence as is in the last preceding section mentioned shall be committed to apprehend without warrant the person offending and to deliver him to any Resident Magistrate, Road Magistrate, Field-cornet, constable or peace officer, who shall keep him in safe custody and with all reasonable despatch convey him with the witness or witnesses before the nearest Resident Magistrate or Road Magistrate (which Road Magistrate shall have in regard to the said offence the same jurisdiction as a Resident Magistrate), to be dealt with according to law: Provided, always, that if in any case the person about to be apprehended as aforesaid shall be in actual charge of or belong to any wagon, cart, or other carriage the person apprehended shall unless there shall be on the spot some other person ready and willing with the consent of the person about to be apprehended to take charge of such wagon, cart, or other carriage cause the offender or some other person to conduct the said wagon,

Apprehension without warrant of offenders under last section.

No. 9, 1846.

Form of committal.

cart, or other carriage to such Resident Magistrate, Road Magistrate, or Field-cornet, or to some public pound or police station, there to be kept for the owner, by whom it may at any time be taken possession of; such owner, however, being bound before receiving possession thereof to pay and satisfy all reasonable charges and expenses attendant upon the keeping of the same and of the oxen or other cattle belonging thereto; and provided also that the warrant of committal by any Road Magistrate for the offence in the last preceding section mentioned shall in substance and effect be agreeable to the form in the third schedule hereunto annexed set forth; or such Resident Magistrate or Road Magistrate may in case it shall appear more conducive to the interest of the owner of such wagon, cart, or carriage proceed in manner and form as in the eighteenth section is provided to seize and detain some property or such matter or thing and allow the said offender to depart; and thereupon all and singular the provisions of the said eighteenth and nineteenth sections of this Ordinance shall be applicable and be applied as fully as if the same were here again repeated.

* * * *

Presumption of ownership of oxen, &c., in owner of wagon.

37. And be it enacted that in all cases the oxen or other cattle drawing or belonging to any wagon, cart, or other carriage which shall under the provisions of the twentieth or twenty-first sections of this Ordinance be brought to or before any Resident Magistrate, Road Magistrate, Justice of the Peace, Field-cornet, or gaoler shall be deemed to belong to the owner of such wagon, cart, or other carriage, and shall be liable to be seized and sold in satisfaction of any fine, penalty, or forfeiture incurred by such owner.

* * * *

SCHEDULE No. 5.

Recognizance mentioned in the 21st Section of the above Ordinance.

Recognizance under section 21.

Before me — [state name and office of the person taking the recognizance] on this — day of —, 18—, came and appeared — [name and residence of the owner of the carriage], who acknowledged himself to owe to our Lady the Queen the sum of £—, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said — [owner's name] is the owner of a certain [state the description of the carriage] detained under the provisions of the 21st section of the Ordinance No. 9, 1846, upon a charge this day [or otherwise, according to the truth] having at or near — [state the place] contravened the said Ordinance; now the condition of this recognizance is such that if the said owner shall personally appear before the Court of the Resident Magistrate of the district of — between the hours of eleven and twelve o'clock on the forenoon of the — day of — next ensuing, then to answer any charge which shall be preferred against him of having so as aforesaid contravened the said Ordinance, and not to depart without the leave of the said Court, then this recognizance to be void.

Acknowledged before me as aforesaid,

(Signed) —, Justice of the Peace.
[or otherwise, as the case may be.]

* * Should there be any surety to the recognizance, add his name and residence next after that of the owner, changing "himself" into "themselves," "his" into "their," and in place of "he" in the last clause of the obligation inserting again the name of the owner. No. 40, 1889.

SCHEDULE No. 6.

Recognizance mentioned in the 22nd Section of the above Ordinance.

Before me — [as in Schedule No. 4] on this — day of — 18—, Recognizance under section 22.
came and appeared — [name and residence of the witness] who acknowledged himself to owe to our Lady the Queen the sum of £—, to be levied and made of his goods and chattels if he shall make default in the condition following:

Whereas the said — hath this day brought or caused to be brought before me — [repeat the name], a certain [state the description of the carriage] whereof — is named as the owner, complaining that by or by means of the same, and at or near — [place] the Ordinance No. 9 of 1846, was this day [or otherwise according to the fact] contravened; now the condition of this recognizance is such that if the said [witness] shall personally appear before the Court of the Resident Magistrate for the district of — [or before A. B., Esq., of —, Road Magistrate, as the case may be] between the hours of eleven and twelve o'clock in the forenoon of the — day of — next ensuing [in case the witness is to appear before a Road Magistrate the hours will depend on the circumstances, and should be so stated], then and there to give evidence touching and concerning the said alleged contravention, and shall not depart without the leave of the Court, then this recognizance to be void.

Acknowledged before me as aforesaid,

(Signed) —, Justice of the Peace.

[or otherwise, as the case may be.]

* * Should there be more witnesses than one, or one or more witnesses with sureties, the necessary changes will be understood from the note to form in Schedule No. 5.

Roads.

No. 40, 1889.]

[Aug. 16, 1889.]

OFFENCES IN REGARD TO ROADS, &c.

204. The provisions of the third, fourth, and fifth sections of the Ordinance No. 9 of 1846, intituled "Ordinance for the better preservation of the public roads and the prevention of accidents and injuries thereon," shall apply to all public roads; provided that the provisions as to negligent, careless, or furious driving shall not apply to any public road in any town or village for which municipal regulations for the prevention of negligent, careless, or furious driving shall be provided. Sections 3, 4 and 5, of Ordinance No. 9 of 1846, shall apply to all public roads.

205. If any person maliciously destroy, injure, or in any way do damage to any public road, whether main road or divisional road, or any toll-bar or toll-house, building, or work of any kind whatever, erected or made under the authority of this Act, or being upon or belonging to any public road within the Colony, it shall be lawful Penalty for malicious destruction, injury, or damage done to any public road, toll-bar, toll-house, &c.

No. 29, 1881.

Arrest without
warrant.Payment to in-
former of half of
sum forfeited by
offender, other
half to council.Council not
debarred by this
section from its
action for
damages.Council may
prosecute
through secre-
tary for damage
to public, other
than main road.Penalty for
malicious arrest
under this
section.

for any person who may see the offence committed to apprehend, and also for any other person to assist in apprehending, the offender, and by the authority of this Act, and without any warrant, to deliver him to any field-cornet, constable, or peace officer, who is to keep him in safe custody, and with all reasonable dispatch to convey him before the Resident Magistrate within whose district the offence has been committed; and if the person or persons accused be convicted of any such offence by any such Resident Magistrate, he or they shall forfeit, severally and respectively, any sum not exceeding three pounds for every such offence, and shall also make full satisfaction for the damage which may have been done thereby: and one moiety of any sum so forfeited shall be paid to the person or persons upon whose information such offender or offenders have been apprehended or brought to trial, and the other moiety shall be paid to the council of the division in which such offence was committed, to be applied by it for the purposes of this Act; and if any such offender do not, upon such conviction, pay the said forfeiture and satisfaction, such Magistrate shall commit him to prison, there to be kept to hard labour, if such Magistrate so order, for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid: Provided,

- (a) That nothing herein contained shall prevent the said council from bringing any action for damages before any court having jurisdiction, should it consider the amount of such damages to exceed the jurisdiction of any Resident Magistrate.
- (b) That the secretary of the said council by authority of the said council shall be competent to prosecute in any case of damage or injury to any public road, without previously applying to the public prosecutor.
- (c) That any person who shall maliciously, and without reasonable and probable cause, apprehend any person, without warrant, for an alleged contravention of this section, shall, upon conviction, be liable to the same penalty as that by this section provided for the contravention thereof.

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Vagrancy.

No. 23, 1879.]

* * * * *

For §§ 2, 5, 6, 7 and 8. see full text of Act under Special J.P.s Special Jurisdiction *infra*.

Villages Management.

No. 29, 1881.]

[June 25th, 1881.]

* * * * *

Act to apply
to communities
proclaimed by
Governor.

2. The provisions of this Act shall apply to all such communities not being municipalities as the Governor may, by any proclamation in that behalf, published in the *Government Gazette*, declare to be subject thereto.

* * * * *

And to call
meeting of
voters to elect
Board of Mana-
gers.

5. As soon as possible after the promulgation of this Act, and the issuing of the proclamation in the second section hereinbefore mentioned, the Resident Magistrate shall issue a notice, by publishing the same in some local newspaper (if any) and by affixing the same to

No. 28, 1882.

the door of the court-house and such other public place or places within the limits aforesaid, as he shall deem convenient, calling, at some specified date, within a reasonable time to be mentioned in such notice, a public meeting of the registered voters enrolled upon the list framed by him, as hereinbefore provided, at some place within the limits aforesaid, to be also mentioned in the said notice, for the purpose of electing a board of management for the community: and in each succeeding year after the year in which the notice aforesaid shall have been given, the said Magistrate shall give a similar notice, published in a similar manner, calling a meeting of the registered voters aforesaid, to be held on the first Wednesday of the month of July in every such year for the purpose of electing a new board of management for the twelve months commencing from the first day of August after the date of such meeting.

6. At every such meeting as in the last preceding section mentioned, the said Resident Magistrate shall attend at the time and place named in the notice thereof, and shall preside at such meeting.⁽¹⁾ Magistrate to
preside at
meeting.

7. It shall be lawful for any such registered voter enrolled as aforesaid present at such meeting to nominate some person who shall be either such registered voter resident within the said limits, or duly qualified to be such, and every such nomination shall, before it is submitted to the meeting, be seconded by some other such registered voter present. From the persons so nominated and seconded such meeting shall elect three who shall form and be called the "board of management" for the community resident within the said limits. In case three persons only shall be so nominated and seconded, such three persons shall be declared to be duly elected as such board of management; but in case more than three persons shall be so nominated and seconded, the said Resident Magistrate shall then and there proceed to take a poll of the registered voters present enrolled as aforesaid (either by ballot or by open voting, as he may decide), and such three persons duly nominated and seconded as shall gain the greatest number of votes at such poll shall then be declared to be duly elected, and shall form the board of management of the community: Provided that if two or more persons who have received the greatest number of votes, and who cannot be both or all elected shall each have received the same number of votes, then the question between such persons shall be decided by lot, to be drawn in presence of the Resident Magistrate; and provided, further, that every registered voter shall be entitled to give one vote for each of any number of candidates not exceeding the number to be elected. Qualification
of members of
Board.

How to be
elected.

No. 28, 1882.]

[June 29th, 1882.]

2. At any such meeting as is mentioned in the fifth section of the said Act ⁽²⁾ any Justice of the Peace may preside when the Resident Magistrate is not present thereat; and the Justice of the Peace so presiding shall have and may exercise all the powers which the Resident Magistrate would have and exercise if present. Justice of
Peace may pre-
side in absence
of Magistrate.

(1) See § 2 Act 28 1882 *infra* and § 4 Act 7 1884.

(2) No. 29 1881 *supra*.

Warlike Articles.

No. 9, 1888.]

ACT

[July 27th, 1888.

TO

Provide for the Prohibition under certain circumstances of the
Exportation from this Colony of certain Articles.

Preamble.

WHEREAS it is expedient to make provision to prevent the exportation from this Colony of certain articles under certain special circumstances and to obviate as far as may be any danger of this Colony being involved in disputes in cases of war: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Governor when
advised by
Executive
Council may
prohibit export
of the scheduled
articles.

1. It shall be lawful for the Governor, when thereto advised by special resolution passed at a meeting of the Executive Council summoned for that purpose, to prohibit by a proclamation published in manner hereinafter set forth for any period limited in such proclamation, the exportation from and across all or any of the borders of this Colony, or by land only, or by sea only, of all or any of the articles mentioned in the Schedule to this Act.

Mode of pub-
lication of the
Proclamation.

2. Every proclamation made in accordance with the provisions of the last preceding section shall be published in the *Gazette*, and in so many registered public newspapers in this Colony as to the Governor shall seem fit.

Penalties for
exporting in
violation of the
Proclamation.

3. From and after the said publication in the *Gazette* of any such proclamation as aforesaid, every person and the agent of any person who shall either personally or by any agent export or attempt to export, in violation of the prohibition contained in such proclamation, any article therein mentioned, shall be liable upon conviction to a fine not exceeding one hundred pounds, or imprisonment with or without hard labour for any term not exceeding twelve months, unless such fine, be sooner paid or to both such fine and such imprisonment: provided, however, that no person shall be convicted under this section, who shall prove to the satisfaction of the court before which he is tried, that the act or attempt in respect of which he is charged or accused was committed at a time when he was in fact ignorant that such proclamation had been published.

Proof by
offender of
ignorance of the
Proclamation
shall excuse
him.

Proclaimed
articles found
under circum-
stances raising
reasonable
suspicion that
they are in-
tended for ex-
port, liable to
seizure by
certain officers
and forfeited;
unless owner
prove that he
had no intention
to export, or
violate Procla-
mation after it
came to his
knowledge.

4. Every article, the exportation of which shall be prohibited by any such proclamation as aforesaid, shall, during the period, if any, limited in such proclamation, be liable to seizure by any justice or special justice of the peace, or by any field-cornet or police constable, or customs or other officer invested by the Governor with power to seize such articles, if such article be found under circumstances raising a reasonable suspicion that it is intended for exportation, or is about to be exported contrary to the provisions of such proclamation: and every article so seized shall be detained in possession by the person effecting seizure, or by such person as the Governor may direct, and shall be deemed to be forfeited for the benefit of the Colonial Government, unless within one month after the date of such seizure the owner or any other person interested in such article, shall prove to the satisfaction of the Supreme Court, in an action to which the Assistant Treasurer of the Colony shall be a defendant party, either that such article was not intended for exportation, or about to be exported, or

No. 9, 1888.

article, after such owner or the fact of the publication of however, that in any case detention or forfeiture any Act, and may direct the or other person interested of that such owner or other no intention to violate and violation of the provisions

Governor may order release of the goods if satisfied that owner did not intend to violate Proclamation.

visions of this Act may be in article seized, confiscated, customs laws regulating or les.

Mode of dealing with seized articles.

retention by law vested in respect of any ship, vessel, being within the territorial this Colony, shall, *mutatis* such proclamation as afore- having or about to leave the respect of every wagon, and crossing or about to cross taken to be vested in the may be appointed by the proclamation, and it shall time to frame, add to, alter, published in the *Gazette*, and proper conduct of all such carrying out and obser- any such proclamation.

Powers of search of Customs and other officers. Governor may frame regulations for regulating conduct of officers and for carrying out this Act.

7. It shall be lawful for the Governor, during the period for which any such proclamation as aforesaid shall be in operation, to grant to any person a special licence for the exportation of any article or articles specified in such licence, and every such licence shall, notwithstanding any prohibition contained in such proclamation, be deemed and taken to authorise the exportation of the article or articles therein named, subject, however, to such conditions and limitations as may be imposed in such licence, the breach of any of which shall render every article otherwise covered by such licence liable to seizure and forfeiture as though such licence had not been granted; provided that in respect of such licence, if granted, no other fee, stamp, or duty shall be required than would have been by law required if such proclamation had not been published.

Governor may under conditions authorise export of proclaimed articles.

Violation of conditions renders articles liable to seizure.

8. Nothing in this Act contained or in any proclamation under it shall be deemed or taken in any way to abrogate or affect the existing provisions of the law regulating or limiting the exportation of fire-arms, gunpowder, or lead.

The passing of this Act not to affect existing laws relating to the export of fire-arms, gunpowder, or lead. Short title.

9. This Act may be cited as the "Warlike Articles Exportation Prohibition Act, 1888."

SCHEDULE.

1. Explosives, and ingredients used in the manufacture of explosives. Schedule.

ORDER NO. H43967

ACQUISITIONS DEPARTMENT
HOOVER INSTITUTION
STANFORD, CALIFORNIA 94305

STANFORD, CA

A manual for the guidance of justices of the peace.

Cape Town

1891 1892 1893

DEALER DATE

CATALOG no. 127

ITEM

LIST PRICE

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DEALER'S REPORT

FUND 770 1/20/77/12

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COST

Warlike Articles.

No. 9, 1888.]

ACT

TO

Provide for the Prohibition under certain
Exportation from this Colony of

Preamble.

WHEREAS it is expedient to make provision from this Colony of certain articles and stances and to obviate as far as may be as being involved in disputes in cases of war Governor of the Cape of Good Hope, by consent of the Legislative Council and Her Majesty as follows:—

Governor when
advised by
Executive
Council may
prohibit export
of the scheduled
articles.

1. It shall be lawful for the Governor, by special resolution passed at a meeting of the Council, to summon for that purpose, to prohibit by proclamation, the exportation from and across of this Colony, or by land only, or by sea of any articles mentioned in the Schedule to this Act.

Mode of publication of the
Proclamation.

2. Every proclamation made in accordance with the last preceding section shall be published in many registered public newspapers in this Colony as shall seem fit.

Penalties for
exporting in
violation of the
Proclamation.

3. From and after the said publication of any proclamation as aforesaid, every person who shall either personally or by any agent, export, in violation of the prohibition contained in any article therein mentioned, shall be liable to a fine not exceeding one hundred pounds, or to imprisonment for any term not exceeding twelve months, or to both such fine and such imprisonment: provided, however, that no person shall be convicted under this section, who shall prove to the satisfaction of the court before which he is tried, that the act or attempt in respect of which he is charged or accused was committed at a time when he was in fact ignorant that such proclamation had been published.

Proof by
offender of
ignorance of the
Proclamation
shall excuse
him.

Proclaimed
articles found
under circumstances raising
reasonable suspicion that
they are intended for export,
liable to seizure by certain
officers and forfeited; unless
owner prove that he had no
intention to export, or violate
Proclamation after it came to
his knowledge.

4. Every article, the exportation of which shall be prohibited by any such proclamation as aforesaid, shall, during the period, if any, limited in such proclamation, be liable to seizure by any justice or special justice of the peace, or by any field-cornet or police constable, or customs or other officer invested by the Governor with power to seize such articles, if such article be found under circumstances raising a reasonable suspicion that it is intended for exportation, or is about to be exported contrary to the provisions of such proclamation: and every article so seized shall be detained in possession by the person effecting seizure, or by such person as the Governor may direct, and shall be deemed to be forfeited for the benefit of the Colonial Government, unless within one month after the date of such seizure the owner or any other person interested in such article, shall prove to the satisfaction of the Supreme Court, in an action to which the Assistant Treasurer of the Colony shall be a defendant party, either that such article was not intended for exportation, or about to be exported, or

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SERIES

REPRINT OR EXTRACT

AUTHOR'S CORRECT NAME

CORRECT TITLE READS

No. 9, 1888.

that no attempt was made to export such article, after such owner or other interested person had knowledge of the fact of the publication of such proclamation as aforesaid; provided, however, that in any case the Governor may at any time release from detention or forfeiture any article seized under the provisions of this Act, and may direct the restoration of such article to the owner or other person interested therein, upon production of satisfactory proof that such owner or other interested person, as the case may be, had no intention to violate and was no party to the violation or attempted violation of the provisions of such proclamation.

Governor may order release of the goods if satisfied that owner did not intend to violate Proclamation.

5. Every article forfeited under the provisions of this Act may be dealt with in all respects as though it were an article seized, confiscated, and forfeited for contravention of the customs laws regulating or prohibiting the importation of certain articles.

Mode of dealing with seized articles.

6. All powers of search, seizure, and detention by law vested in officers of customs or any other officers in respect of any ship, vessel, wagon, vehicle, or other conveyance, coming within the territorial waters of, or crossing any border into this Colony, shall, *mutatis mutandis*, and during the operation of any such proclamation as aforesaid and in respect of any ship or vessel leaving or about to leave the territorial waters of this Colony, and in respect of every wagon, vehicle, or other conveyance, going from and crossing or about to cross any border of this Colony, be deemed and taken to be vested in the said officers and in such other officers as may be appointed by the Governor to carry out the purposes of such proclamation, and it shall be lawful for the Governor from time to time to frame, add to, alter, and amend, rules and regulations, to be published in the *Gazette*, and which shall prescribe and regulate the proper conduct of all such officers and all matters concerning the due carrying out and observance of the provisions of this Act and of any such proclamation.

Powers of search of Customs and other officers. Governor may frame regulations for regulating conduct of officers and for carrying out this Act.

7. It shall be lawful for the Governor, during the period for which any such proclamation as aforesaid shall be in operation, to grant to any person a special licence for the exportation of any article or articles specified in such licence, and every such licence shall, notwithstanding any prohibition contained in such proclamation, be deemed and taken to authorise the exportation of the article or articles therein named, subject, however, to such conditions and limitations as may be imposed in such licence, the breach of any of which shall render every article otherwise covered by such licence liable to seizure and forfeiture as though such licence had not been granted; provided that in respect of such licence, if granted, no other fee, stamp, or duty shall be required than would have been by law required if such proclamation had not been published.

Governor may under conditions authorise export of proclaimed articles.

Violation of conditions renders articles liable to seizure.

8. Nothing in this Act contained or in any proclamation under it shall be deemed or taken in any way to abrogate or affect the existing provisions of the law regulating or limiting the exportation of fire-arms, gunpowder, or lead.

The passing of this Act not to affect existing laws relating to the export of fire-arms, gunpowder, or lead.

9. This Act may be cited as the "Warlike Articles Exportation Prohibition Act, 1888."

Short title.

SCHEDULE.

1. Explosives, and ingredients used in the manufacture of explosives.

Schedule.

No. 11, 1858.

2. Military and naval stores.
3. Marine engines.
4. Screw-propellers.
5. Paddle-wheels.
6. Cylinders.
7. Cranks.
8. Shafts.
9. Boilers.
10. Tubes for boilers.
11. Boiler plates.
12. Fire bars.
13. Every article, or any other component part of an engine or boiler, or any article whatsoever which is, can, or may become applicable for the manufacture of marine machinery.
14. Torpedoes.
15. Torpedo boats.
16. Boats fitted with apparatus to be used for torpedoes.
17. All apparatus for projecting inflammable materials or firing torpedoes.
18. Pumps or other machinery intended to be used for projecting inflammable materials.
19. Machinery intended to be used in the construction of torpedoes or torpedo boats

Wills (Search Warrants).

No. 104.]

[July 5, 1833.

Warrants to
search for
stolen or con-
cealed wills by
Judges, Magis-
trates, &c.

5. And be it further enacted that the Chief Justice of the Colony, every Judge of the Supreme Court, and every Resident Magistrate or Justice of the Peace within the Colony, upon information taken on oath being transmitted to him by the Attorney-General or any clerk of the peace or upon the information of any person made on oath before any such Judge or Magistrate that there is reason to suspect that any will, codicil, or other testamentary instrument stolen or concealed for any fraudulent purpose is concealed in any place within the jurisdiction of such Judge or Magistrate, may by warrant under his hand cause every such place to be searched during the daytime.

Weights and Measures.

No. 11, 1858.]

[June 5, 1858.

Resident
Magistrate or
other officers
may enter any
place to compare
the weights and
measures in use
with the stan-
dards.

10. (1) From and after the taking effect of this Act it shall and may be lawful for any Resident Magistrate, Justice of the Peace, or chief constable of police at all reasonable times to enter any place within the limits of his district wherein goods shall be exposed and kept for sale or wherein any trade or dealing by weight or measure shall be carried on, and therein to examine all weights, measures, balances, steelyards, or other weighing machines there being and to compare and try such weights and measures with the copies of the standard weights and measures authorized to be provided as in the second and third sections of this Act mentioned.

(1) See Act 15, 1876, §§ 5 and 6.

11. If upon such examination as in the preceding section mentioned it shall appear that any weight or measure is not formed according to the standard weights and measures by this Act established and is not of some one of the denominations in the schedule to this Act annexed or is light or otherwise unjust, the same shall be liable to be seized, and the person or persons in whose possession the same shall be found shall upon conviction incur the forfeiture thereof and also a penalty not exceeding five pounds.

No. 20, 1856.

Penalty if found to be at variance with the standards.

12. Any person who shall have in his possession any balance, steelyard, or other weighing machine which shall on such examination as in the tenth section mentioned be found incorrect or otherwise unjust, or who shall refuse or neglect to produce for such examination when thereto required all weights, measures, balances, steelyards, or other weighing machines which shall be in his possession, or shall otherwise obstruct or hinder such examination, shall incur the forfeiture of such balance, steelyard, or other weighing machine as shall have been found to be incorrect or unjust or of such of them as he shall have refused or neglected to produce for such examination or have hindered or obstructed the examination of, and also a penalty of any sum not exceeding five pounds.

Penalty for obstructing officers in their examination of weights, measures, &c.

* * * * *

Witnesses.

No. 20, 1856.]

[June 4, 1856.

[Section 52 ⁽¹⁾ provides that when it shall be necessary to summon any witness resident in another district it shall be lawful for the Resident Magistrate or any Justice of the Peace for such other district to endorse such summons which shall then have in law the like effect in requiring the attendance of such witness before the Magistrate by whom the same was issued as if such witness at the time when such summons was served had resided or been within the district of such last mentioned Magistrate.]

⁽¹⁾ *Fleischer v. Klassen*, 3 E.D.C. 207; *Becker v. Beukes*, 4 E.D.C. 313; *Shaw's Trustee v. Alcott*, 5 E.D.C. 122.

SPECIAL JUSTICES OF THE PEACE.

JURISDICTION.

1. GENERAL.
2. SPECIAL.

APPENDIX.

1. FORMS.
2. ATTORNEY-GENERAL'S CIRCULAR.
3. CERTIFICATE OF J.P. UNDER 10, 1879.

No. 10 of 1876.]

[July 4, 1876.

To Improve the administration of Justice in Places distant from a Seat of Magistracy.

Preamble.

WHEREAS it is expedient that facilities should be given for the trial of certain offences committed at places distant from the seat of a Resident Magistrate: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

Appointment
of Special
Justices of the
Peace.

1. It shall be lawful for the Governor from time to time to appoint any person whom he may think proper to act as a Special Justice of the Peace under this Act within such local limits as may be fixed and determined by him, not being within ten miles of the office of any Resident Magistrate.

Their juris-
diction and
powers.

2. Every such Special Justice of the Peace shall have and enjoy, and be at liberty to exercise, within the limits so fixed and determined as aforesaid, over and in respect of any person committing within such limits any of the offences following, that is to say :

- (A.) Assault, where no dangerous wound is given and no dangerous weapon is used.
- (B.) Theft of any property not being a horse, mare, gelding, colt, filly, mule, ass, bull, cow, ox, heifer, calf, sheep, goat, or ostrich, and not exceeding in value the sum of two pounds sterling.
- (C.) Attempt to commit either of the above offences, or being accessory to the commission thereof.
- (D.) Receiving stolen goods (not being anything excepted in clause B, and not exceeding in value the sum of two pounds sterling), knowing them to have been stolen.
- (E.) Contravention of the seventh and eighteenth ⁽¹⁾ sections of the Ordinance No. 25 of 1847, intituled "Ordinance for improving the police of the Colony."
- (F.) Contravention of any municipal regulation.
- (G.) ⁽²⁾ *Contravention of the 35th section of the Ordinance No. 9 of 1851, intituled "Ordinance for the better regulation of the sale of wines and spirituous and fermented liquors," as amended by the eighth section of the Wines and Spirits Act, 1875.*

⁽¹⁾ § 18 Ord. 25, 1847, repealed by Act 27, 1882 (Police).

⁽²⁾ Ord. 9, 1851, repealed by Act 28, 1883. Jurisdiction under latter Act given to Special J.P. by § 86 (Liquor.)

- (H.) Contravention of any of the provisions of the Act No. 22 of 1867, intituled "An Act to amend the law relating to the issue of passes to, and contracts of service with, natives, and to the issue of certificates of citizenship, and to provide for the better protection of property." ⁽¹⁾ No. 10, 1876.

the same jurisdiction, power, and authority as if he were the Resident Magistrate of the district in which the offence then under investigation was committed: Provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender in any higher or more severe manner than by fine not exceeding twenty shillings, ⁽²⁾ or (and in default of payment of the fine) by imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days. ⁽²⁾

3. In any proceeding relative to the prosecution of any offence before any Special Justice of the Peace under this Act, the form of summons to be served upon the defendant to appear to answer to the charge, the form of the process to obtain, and power to compel the attendance of witnesses, the form of recording the judgment or sentence of such Justice of the Peace, and all other forms and proceedings shall, as near as may be, be those from time to time directed and provided and had in regard to criminal cases in the Courts of Resident Magistrates: Provided, that in place and stead of the messenger of the Court of Resident Magistrate there shall be inserted the name of any person whom such Justice of the Peace shall nominate and appoint (which person is hereby authorized to act in regard to any such summons or process as aforesaid, as if the same were the process or summons of a Resident Magistrate's Court of which such person was messenger); and provided that no heading other than the direction of the instrument to such person as aforesaid, and no signature other than that of the Special Justice of the Peace, shall be necessary: And provided that no penalty for the non-attendance of witnesses shall exceed the sum of twenty shillings, and in default of payment of the fine the term of imprisonment shall not exceed the term mentioned in the second section of this Act. Forms of summons, &c.

4. Upon the day of hearing, the Special Justice of the Peace shall inquire into the charge by hearing all such competent witnesses upon oath as may be produced in support or in disproof of the same, and shall faithfully take down the evidence and proceedings in writing, and note any objections which may be made to any evidence received, or to the rejection of any evidence refused to be admitted, and shall make or cause to be made a record in a book, to be kept for that purpose, of every such case, showing in separate columns the name of the prosecutor, the name of the person complained of, the nature of the alleged offence, the date when the complaint was made, the date when the defendant was lodged in prison, the day of hearing, the judgment given, the sentence pronounced on conviction, and any remarks which such Justice of the Peace shall deem it proper to make. Penalty for non-attendance of witnesses.

⁽¹⁾ Jurisdiction under Masters and Servants Laws conferred by Act 30 of 1839 *infra*; and in certain cases under Act 27 of 1882 (Police Offences) by § 20 of that Act, also by Act 28 of 1883.

⁽²⁾ Increase to £2 and imprisonment not to exceed one month. See Act 40, 1882, § 23 *infra*.

Procedure in cases brought for trial.

No. 10, 1878.

Payment of
costs in un-
founded and
vexatious
cases.

5. In all cases brought before any Special Justice of the Peace under this Act it shall be lawful for him, if he shall dismiss the charge on the ground that the same is unfounded and vexatious, to adjudge that the private prosecutor shall pay to the defendant the costs of his defence, the amount of such costs to be taxed and allowed by such Justice of the Peace, and not to exceed the costs which would have been payable were the case a civil one in a Court of Resident Magistrate, and such costs shall be recovered, in default of payment thereof, together with the costs of recovering the same, to be also fixed and allowed by such Justice of the Peace, in like manner as directed by the forty-eighth ⁽¹⁾ section of the said Ordinance No. 9 of 1851, with regard to fines or penalties in that section mentioned.

When a trial
should be
stopped, and
proceedings
sent to Resident
Magistrate, or
a preparatory
examination
taken.

6. When, in the course of any trial before a Special Justice of the Peace under this Act, it shall appear to such Justice of the Peace that the offence is, from its nature or magnitude, only subject to the jurisdiction, or more proper for the cognizance, of the Court of Resident Magistrate of the district or other superior Court, such Justice of the Peace shall stop the trial, and either transmit the proceedings in the case, with report thereon, to the Resident Magistrate of the district, or commence anew the examination of the person

⁽¹⁾ § 48 of Ordinance 9, 1851:—And be it enacted that when and as often as any offender shall be convicted of any offence against any of the provisions of this Ordinance it shall and may be lawful for the Magistrate or Justice of the Peace convicting such offender to issue his warrant for levying the amount of any fine or penalty imposed upon such offender by distress and sale of the goods of such offender whether such offender shall be in custody by reason of his conviction of such offence or not and for levying also the costs of such distress and sale, and every such warrant shall in substance be agreeable to the form in the schedule to this Ordinance in that behalf set forth, and the overplus if any levied under any such warrant shall be rendered to the said offender; and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the Courts of Resident Magistrate for the sale of goods and chattels taken under the process of execution by such Courts. Provided, always, that as often as any such warrant shall be issued by any Justice of the Peace the person to whom such warrant shall be directed shall for the purpose of such seizure and sale be deemed to be invested with the same rights and obliged to the performance of the same duties and be remunerated at the same rate as the messenger of a Magistrate's Court would have been invested with or obliged to or remunerated at in case the warrant in question had been issued by such Court.

Form of Warrant for Distress and Sale referred to in foregoing section.

To _____, Messenger of the Court of the Resident Magistrate of _____
[or in case the warrant be issued by a Justice of the Peace, To _____, the person to whom the warrant is directed].

Whereas [name of the offender], of _____, was on this day [or on the _____ day of _____ 18 ____] convicted before me of contravening the Ordinance No. 9, 1851, and was duly adjudged to forfeit, as a penalty, the sum of £ _____; this is therefore to authorize and require you that of the goods and chattels of the said _____ you cause to be levied and raised the said sum of £ _____, with the costs of such conviction, amounting to the further sum of £ _____, together with your charges about the same, and return to the Clerk of this Court [or when the warrant is issued by a Justice of the Peace say "return to me"] what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at _____, this day of _____, 18 ____.

(Signed)

_____, Resident Magistrate or
Justice of the Peace.

[as the case may be].

E. F., Clerk of the Court [this is to be omitted when the warrant is issued by a Justice of the Peace].

accused, and the witnesses, as in a preparatory examination, and the proceedings upon and with respect and subsequent to such preparatory examination, shall be the same as those prescribed by law as to ordinary preparatory examinations.

No. 10, 1876.

7. Any Special Justice of the Peace acting under this Act shall have full power and authority by warrant under his hand to commit any person accused of having committed any of the offences in the second section hereof mentioned, whether before or during trial, and any person who may be committed for trial after preparatory examination, as in the last preceding section mentioned, to the nearest gaol or lock-up, to be there detained until liberated in due course of law; and it shall also be lawful for such Justice of the Peace upon the conviction of any such person as aforesaid, by and before him, by like warrant as aforesaid, to commit such convicted person to such gaol or lock-up to be there safely kept until he shall have undergone the punishment awarded, or shall be otherwise lawfully discharged: Provided, however, that no person shall be committed to any gaol or lock-up before trial as aforesaid for any of the offences mentioned in sub-sections A and F of the second section of this Act, unless such Special Justice of the Peace shall have good and reasonable grounds for believing that the offender intends to abscond for the purpose of defeating the ends of justice.

Imprisonment of offenders.

8. In case of there not being any ordinary constable or not sufficient ordinary constables available either to arrest or to convey to such gaol or lock-up any person accused, committed for trial, or convicted as aforesaid, it shall be lawful for the Justice of the Peace to appoint any proper person or persons to be a special constable or special constables for the arrest, custody, or conveyance, as the case may be, of such person to such gaol or lock-up, and every such special constable shall be paid at the same rate as if he had been appointed by a Field-cornet under the Ordinance No. 9 of 1848.

Appointment of special constables.

9. When and as often as any Special Justice of the Peace shall exercise summary jurisdiction under and by virtue of this Act, he shall forthwith, after having disposed of the case, forward to the Registrar of the Supreme Court, or of the Court of the Eastern Districts (according as such case shall be disposed of in the Western or Eastern Districts respectively), the record of the proceedings in the case together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, shall *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said sections for the convicting Resident Magistrate; and all matters required to be done in the said sections by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Proceedings in cases summarily adjudicated to be forwarded to Registrar of Supreme or Eastern Districts Court, as the case may be.

10. Every appointment of a Special Justice of the Peace under this Act shall be notified in the *Government Gazette*, together with the local limits within which he is to exercise jurisdiction, and shall be during pleasure; and every such Justice of the Peace, upon his appointment, shall take and subscribe the like oaths as are prescribed in and by the Ordinance No. 32 for Justices of the Peace, and shall without any further appointment be in the same position as if he had been appointed a Justice of the Peace under the said Ordinance, all the provisions of which shall apply to such Justice of the Peace.

Appointment of Special Justice and limits of his jurisdiction to be notified in *Gazette*. Oaths to be taken.

No. 40, 1882.

Definition of
term "lock-up."Jurisdiction of
Resident Magis-
trates as to
escaped pris-
oners, &c.Effect of this
Act on existing
powers of
Justices of the
Peace and Re-
sident Magis-
trates.

Short title.

11. By "lock-up" in this Act is meant any building or part of a building in which any person lawfully arrested or detained in custody under this Act is placed while in such custody, whether before conviction or committed for trial or afterwards, and every such lock-up shall, as to such person, be deemed to be a public gaol within the meaning of the Ordinance No. 24 of 1847, intituled "Ordinance for improving the gaols of this Colony," and the Act No. 5 of 1866-67, intituled "An Act for the better maintenance of discipline among persons under sentence of imprisonment with hard labour;" and the Resident Magistrate of the district in which such lock-up is situate shall have the like jurisdiction and powers as to offences committed by any such prisoner while imprisoned in any such lock-up or kept to hard labour outside the precincts of such lock-up as by the said last-mentioned Ordinance and Act respectively are given to the Resident Magistrate of the district as to a public gaol within his district: Provided that it shall not be lawful for any such Resident Magistrate for any offence so committed to punish the offender in any higher or more severe manner than by imprisonment with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for a period not exceeding three months, or by corporal punishment not exceeding twelve lashes.

12. [This section refers to Act 2, 1855, which is repealed, and it has no further applicability.]

13. Nothing in this Act contained shall, except where expressly stated to the contrary, interfere with or affect any jurisdiction, powers, or authority already possessed by law by any Justice of the Peace, or with the jurisdiction, powers, or authority of any Court of Resident Magistrate.

14. This Act may be cited for all purposes as "The Better Administration of Justice in Criminal Cases Act, 1876."

Jurisdiction.

No. 40, 1882.]

[Sept. 1, 1882.]

* * * *

JURISDICTION OF SPECIAL JUSTICES OF THE PEACE.

Extension of
jurisdiction of
Special Justices
of the Peace.

22. Every special Justice of the Peace appointed under the provisions of "The better Administration of Justice in Criminal Cases Act, 1876," shall in addition to the jurisdiction conferred by the second section of the said Act, have and enjoy and be at liberty to exercise within the local limits fixed and determined by any such proclamation as is in the first section of the said Act mentioned, the same jurisdiction, (1) power and authority as if he were Resident Magistrate of the district in which the offence then under investigation was committed, over and in respect of any such offence or instance of misconduct as is mentioned in the second and seventh sections respectively of the "Masters and Servants Law Amendment Act, 1873," as such Act is amended by the "Master and Servants Act, 1875," subject to the provisions of the said Acts respectively.

Their powers
of fine and im-
prisonment.

23. As often as any such special Justice of the Peace shall, by the provisions of any Act, be empowered to impose a fine, such fine shall

(1). Jurisdiction of Special J.P.s extended to all offences against Masters and Servants Acts by Act No. 30, 1889, which see *infra*.

not exceed two pounds, and as often as any such Justice shall be empowered to adjudge imprisonment upon non-payment of any fine or otherwise such imprisonment shall not exceed one month.

No. 21, 1884.

Criminal Procedure.

No. 40 1828.]

[January 25, 1828.]

3. (1) All crimes and offences against the law (for the commission of which any penalty or punishment is by law provided), not punishable by death, transportation, or banishment, committed by any person within the local limits within which the jurisdiction of any inferior Court erected or to be erected by the Governor of this Colony is appointed by the said Governor to be exercised, are also subject to the jurisdiction of such inferior Court.

All offences not punishable by death, transportation, or banishment committed within local limits of an inferior court, subject to the jurisdiction of such inferior court.

4. (2) The Supreme Court has full power, jurisdiction, and authority to review the proceedings of all inferior Courts of Justice within the Colony; and, if necessary, to set aside or correct the same.

Power of review in the Supreme Court of all proceedings of inferior courts.

Lock Up.

No. 23 1888.]

[January 1, 1889.]

PART V.—MISCELLANEOUS.

45. When any Periodical Court or Court of Special Justice of the Peace holden at a place where there is no ordinary prison shall sentence a person to imprisonment with or without hard labour for any period not exceeding fourteen days, it shall be competent for such court to direct such imprisonment to be in the nearest lock-up in lieu of in any other prison.

Place of confinement of person under short sentence by periodical court or special justice of the peace.

Dutch Language.

No. 21, 1884.]

ACT

[July 25, 1884.]

To Sanction the use of the Dutch Language equally with the English in Courts of Justice.

WHEREAS it is expedient to afford facilities for the use of the Dutch language equally with the English in Courts of Justice and in legal proceedings: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. Notwithstanding anything contained in the Charter of Justice or in the Act No. 20 of 1856, or in any other statutory enactment having the force of law in the Colony the Judges of the superior Courts of Justice may, and Resident Magistrates, Special Justices of the Peace and Field-cornets shall, allow the use of the Dutch language equally with the English language at the hearing of any suits, cases, or enquiries, civil or criminal in their respective Courts when requested

Charter of justice and previous enactments not to affect this Act.

Judges may, and judicial officers shall, allow use of

(1) See Act 20, 1856, § 42 (Resident Magistrates), and Act 10, 1876, special J.P.s.

(2) See Charter of Justice, § 32; Act 21, 1876, § 4; Act 5, 1879, §§ 22 et seq.; Act 40, 1882, § 16; Act 17, 1886, §§ 1 and 5. In *re* Houghton 2, E.D.C. 33.

No. 40, 1889.

either Dutch or English in Courts of Justice.

Divisional Councils or number of voters may apply for summonses and notices to be in Dutch.

Power of Governor by Proclamation to authorise the same.

Provision as to issuing process in Dutch or English.

Provision as to issuing of legal process in the Dutch language in certain cases in divisions of the Colony to which § 2 of Act No. 21 of 1884 applies.

Short title.

so to do by any of the parties to such suits or other proceedings; and upon such allowance it shall be lawful for either of the parties to such suits,⁽¹⁾ cases, or other proceedings, or their respective counsel, attorneys, or agents, to use either the English or Dutch language in the conduct of their cases before such Courts.

2. Whenever any Divisional Council shall by a majority of its members, resolve at a meeting duly convened for that purpose; or whenever no fewer than one-third of the voters registered for Parliamentary elections in any division shall in writing, by petition, apply to the Governor to order the issuing of summonses,⁽¹⁾ notices, and documents referred to in any summons, in all suits brought in any of the Courts within such division, in the Dutch as well as in the English language, it shall be lawful for the Governor in either of the cases before-mentioned by proclamation in the *Gazette* to grant such order. ⁽²⁾ Provided, however, that if it shall appear to the officer issuing any such process as aforesaid, either from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the English language to understand the purport of such process, or is not sufficiently acquainted with the Dutch language to understand the purport of such process if it be drawn in the Dutch language, then it shall not be necessary to issue such process in the Dutch language as well as the English language. ⁽³⁾ Provided, further, that if it shall appear to the officer issuing any such process as aforesaid, either from his personal knowledge or otherwise, that the person upon whom the same is intended to be served is sufficiently acquainted with the Dutch language to understand the purport of such process if drawn in that language, or is not sufficiently acquainted with the English language to understand the purport of such process if it shall be drawn in the English language, then it shall not be necessary to issue such process in the English language, but issue thereof in the Dutch language shall, for all legal purposes, and notwithstanding anything to the contrary contained in any law in force in this Colony, be good, valid and effectual.

3. This Act may be cited as "The Dutch Language Judicial Use Act, 1884."

Gates.

No. 40, 1889.]

[Aug. 16, 1889.

Lands over which public road runs may be fenced, if free passage be secured by swing-gate kept in proper repair, substantially constructed and properly hung.

153. Whenever the owner or occupier of any land over which a public road, path, or track shall pass shall be desirous of fencing such land, he shall be at liberty to do so if he provides a swing-gate in such fencing so as to allow persons entitled to use such road, path or track, free passage; and such gate shall at all times be kept in proper repair to the satisfaction of the Divisional Council by the owner or occupier of such land: Provided that any gate placed across any public road, path, or track, which is not a swing-gate, substantially constructed and properly hung, shall be deemed to be unlawfully so placed, and the owner or occupier of the property whereon such gate is placed shall in every case be liable to all such penalties and obli-

(¹). R v Wetton, 2 Appeal Court 71.

(²). Printed as amended by § 14, Act No. 17, 1886.

(³). Do. § 1, Act No. 15, 1888.

gations as would be incurred by any person wilfully obstructing such public road, path, or track. No. 4, 1883.

154. Any person, not being such owner or occupier, or not being thereto duly authorised by such owner or occupier, who shall open or unfasten any gate erected or provided in pursuance of the provisions of the last section, except for the purpose of then and there passing through the same with or without any vehicle or animals in his care, or of enabling some other person or persons so to pass, or who shall pass through any such gate and shall fail or neglect, forthwith after so passing through the same, to close and fasten such gate or cause it to be closed and fastened, shall, upon conviction before any Resident Magistrate or Special Justice of the Peace, be liable to a penalty of not exceeding five pounds, or in default of payment thereof, to imprisonment with or without hard labour for any term not exceeding thirty days, unless such fine be sooner paid. And any person who shall damage or destroy such gate whether in passing through or otherwise, shall forthwith make the same good, and in case of failure, or neglect shall upon conviction before any Resident Magistrate or Special Justice of the Peace be liable to a penalty of not exceeding ten pounds, or in default of payment thereof to imprisonment, with or without hard labour, for any term not exceeding two months, unless such fine be sooner paid.

Penalty for opening, and for leaving open any swing-gate except for purpose of lawful passage.

Penalty for damaging, &c., any such gate.

* * * * *

Health.

No. 4, 1883.]

ACT

[September 6, 1883.]

To Amend the Law relating to Public Health.

WHEREAS it is expedient to amend the law relating to public health: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

Preamble.

1. The laws mentioned in the first schedule hereto to the extent to which the same are therein expressed to be repealed shall be and the same are hereby repealed, except as to any things done, offences committed, or proceedings commenced or pending at the time of the taking effect of this Act.

Repeal of repugnant laws.

PART I.—GENERAL PROVISIONS.

2. In the construction of this Act the term “local authority” ⁽¹⁾ shall mean

Interpretation Clause.

The council or board of commissioners of any municipality;

The board of management of any community in which the “Villages Management Act, 1881,” is in operation;

A board consisting of not more than five persons nominated by the Governor for the purpose of carrying the provisions of this Act into effect, within any area to be fixed by the Governor by proclamation;

The Resident Magistrate, or Special Justice of the Peace (if any, or as the case may be) residing in any town or village which is not a municipality, or in which the said “Villages Management Act” is not in operation, or in which no such

⁽¹⁾ Cradock Divisional Council v. Divisional Council of Middelburg, 5 E.D.C.

No. 4, 1883.

Board as aforesaid has been appointed to act; and, when there shall be no such Resident Magistrate, Special Justice of the Peace or Board, any Justice of the Peace residing in such town or village. The area within which such Resident Magistrate or Special or other Justice of the Peace, as the case may be, shall exercise authority, shall be such as the Governor may by proclamation determine.

The term "quarantine" shall include in its meaning the interdiction of free communication with persons on land infected with disease or suspected of being so infected.

And the term "port officer" shall mean the port captain or harbour master of any port, or the officer for the time being performing duties usually performed by such officers.

3. [Repealed by Act No. 41, 1885.]

Municipalities
may levy rates.

4. The Council or Commissioners of every municipality are hereby empowered to levy special rates upon all property liable to be rated for the purpose of defraying any expenses incurred or to be incurred under the provisions of this Act.

Tenants' rates.

When such Council or Commissioners are authorized to levy tenants' rates, the special rates shall be levied as such, and all such rates shall be imposed, collected, and recovered in the same manner as ordinary rates.

5. [Repealed by Act 40, 1889.]

Powers ex-
ercised by
Governor may
be revoked.

6. Any power by this Act authorized to be exercised by the Governor may be exercised from time to time, and any order, regulation or direction to be made or given by the Governor, may be revoked, altered, varied as occasion may require.

Quarantine to
apply to small-
pox.

7. The provisions of this Act and any regulations framed under this Act concerning quarantine or contagious or infectious diseases shall extend and apply to small-pox and to such other diseases as the Governor shall by proclamation declare are to be deemed contagious ⁽¹⁾ or infectious within the meaning of this Act.

Publication of
regulations.

8. All regulations made by the Governor under the provisions of this Act shall be published in the *Government Gazette*, and shall have effect from and after the date of such publication: and such regulations shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days after the commencement of the next session.

Magistrates'
Courts to have
jurisdiction
under this Act.

9. The courts of the Resident Magistrates shall have jurisdiction in any prosecution for the contravention of the provisions of this Act, or any order or regulation made under this Act, in respect of any offence committed within the districts of such magistrates respectively, and in the case of any offence committed in any port or upon the sea within three miles of the shore the Court of the Resident Magistrate of any district in which the person accused shall be found within six months after the commission of the act or offence charged, shall have such jurisdiction.

Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act.

⁽¹⁾ R. v. Cornelia and Sanna, 3 E.D.C. 260.

PART II.—QUARANTINE.

No. 4, 1888.

10. All vessels, as well Her Majesty's ships of war, and the ships of war of other nations, as others, arriving in the ports of this Colony, shall be liable to the provisions of this Act, and any regulations made under this Act, concerning quarantine and the prevention of infection.

Vessels of every kind subject to provisions of this Act.

11. The Governor may notify that any place, whether within or beyond the Colony, is infected with any infectious or contagious disease dangerous to the health of the people. Immediately after such notification

Notification of infectious disease by Governor and the consequences.

- (1) All vessels arriving at any port or place in the Colony from or having touched at any such infected place;
- (2) All vessels and boats receiving any person or thing from or out of any vessel coming from or having touched at any such infected place;
- (3) All persons or things on board of any vessel coming from or having touched at such infected place, or on board of any such vessel as is above mentioned in sub-section (2); shall be liable to quarantine.

12. Any vessel arriving at any port or place in this Colony from any place within or beyond this Colony having any infectious or contagious disease on board, or on board of which any infectious or contagious disease may have appeared in the course of the voyage, or arriving under circumstances deemed to be suspicious as to infection or contagion, although such vessel shall not have arrived from any place declared to be infected, and any persons and things on board the same, shall be liable to quarantine.

Ships which have had infectious diseases during voyage.

13. All vessels and boats, whether coming from a place declared to be infected, or being otherwise liable to quarantine under the provisions of this Act, and all persons (as well pilots as others) and things, whether coming or brought in such vessels or boats, or going or put on board the same, either before or after the arrival of such vessels or boats at any place in the Colony, shall perform quarantine in such places for such time and in such manner as shall be directed by the Governor, and shall be subject to all the provisions contained in this Act, or in any regulations made under the authority of this Act concerning quarantine.

Vessels, &c., arriving from infected places to be quarantined.

14. Until any vessels and boats, persons and things, liable to quarantine shall respectively have performed, and shall be duly discharged from quarantine, no such persons or things shall come or be brought on shore, or go or be put on board any other vessel or boat in order to be brought or come on shore in any place in this Colony, except in such manner, and in such cases, and by such authority as shall be directed or permitted by the Governor, or by any regulations made under the authority of this Act.

Nothing to be landed till ship discharged from quarantine.

15. Any commander or master of a vessel arriving at any port or place in this Colony from any place beyond, or from, or having touched at any place declared by the Governor to be infected, within the Colony, and any person on board thereof, communicating or attempting to communicate with the shore, or with any other vessel, or with any boat from any vessel, or from the shore, or allowing any person on board so to do, otherwise than by signal, before such vessel shall have received pratique from the port officer or health officer, or other person duly authorised in this Act, and before the health flag

Penalties for breach of quarantine.

No. 4, 1868.

has been hoisted in token thereof, and any person from the shore, or from any vessel in any of the ports of this Colony, or from any boat, except the officers authorized under this Act, boarding or going alongside any such vessel arriving in any of the said ports, or receiving into any boat any parcel or package, or other thing whatever, from on board such vessel, previously to such vessel having received pratique, in the mode hereinafter described, shall be liable on conviction to a penalty not exceeding fifty pounds, and, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months.

Port Officers
and others
boarding vessels
to remain on
board till
pratique
granted.

16. If at any time it should be necessary for the port officer to board any vessel entering a port of this Colony, or to allow his boat's crew to board the same, or otherwise personally to communicate with such vessel, with the view of rendering assistance in case of danger, previously to such vessel having received pratique, all such persons who may have so communicated with the said vessel shall remain in quarantine, either on board such vessel, or in their own boat, until such time as the vessel with which they have so communicated may have obtained pratique, on pain of rendering themselves liable to the penalties hereinafter imposed on persons unlawfully communicating with the shore before pratique has been given; and if the vessel with which the port officer, or boat's crew, have communicated as aforesaid, be afterwards placed under quarantine by a competent authority, the said port officer, or boat's crew, shall remain in and be liable to quarantine.

Masters of
ships to furnish
declaration of
health, &c.

17. On the arrival of any vessel in any port of this Colony, the commander or master thereof shall, upon being furnished by the port officer, or health officer, or other person duly authorized, with a printed declaration of health, according to the form in the second schedule hereto, fill up and sign the same, if he feels himself justified from the perfect state of health of every person on board so to do, and shall return the said declaration, so filled up and signed, to the officer as aforesaid; whereupon such vessel may be granted pratique; and the commander or master shall then hoist the union-jack, or flag of the nation to which the vessel belongs, to the main-top-gallant-mast head, as the health flag, in token of such pratique having been duly granted. But no such pratique shall be deemed or taken to be so granted until duly signified by such health flag having been so hoisted.

Penalty for
false statement.

18. If the commander or master of any such vessel shall sign and deliver any declaration of health containing any false statement, or false answer to any question therein inserted, such commander or master shall, upon conviction, be liable to a penalty not exceeding two hundred pounds, or in default of payment, to imprisonment, with or without hard labour, for a period not exceeding twelve months, or to both such penalty and such imprisonment.

If clean bill of
health cannot
be given inquiry
to be made.

19. If any commander or master of a vessel arriving in a port of this Colony should, from the ill state of health of any of the persons on board of his vessel, or from any other circumstances, not deem himself warranted to sign the declaration of the perfectly healthy state of the vessel, the port officer, or other person as the case may be, shall in every such case make every necessary inquiry into the state of health of the officers, passengers, crew, and others, and if there should be any sick persons on board into the nature and character of their complaints; and shall, after such inquiry, either detain the said vessel

in quarantine, or give her pratique as to him may appear fitting: Provided that when there may be any reasonable cause of doubt or suspicion, he shall not grant pratique, but shall place the vessel in quarantine, and report thereon, if the vessel is in Table Bay, to the Colonial Secretary, or if in any of the other ports of this Colony, to the Resident Magistrate thereat, or to the Justice of the Peace or other local authority nearest thereto, in order that further medical advice may be obtained.

No. 4, 1893.

20. If the port officer or health officer should deem it necessary to place the vessel in quarantine, he shall notify the same to the commander or master thereof, and give him a copy of this Act, and of any regulations made under this Act concerning quarantine, and order him to hoist a yellow flag at the fore-top-gallant-mast head, and shall forthwith report the same to the Colonial Secretary, or other chief local authority as aforesaid of the district in which the port is situated, in order that the necessary measures may be taken for cutting off all communication with such vessel, for such time as may be needful, and, under proper precautions to be superintended by the health officer, or other person duly appointed, for furnishing the said vessel with any supplies she may be in want of; and if the commander or master of any vessel so placed in quarantine have not a yellow flag on board, the health officer or port officer shall order one to be furnished forthwith, at the expense of the said commander or master, who shall hoist the same, or cause it to be hoisted, as directed, and to be kept up during the day, so long as the vessel may be detained in quarantine, under a penalty not exceeding twenty pounds; and during the night, the commander or master of any vessel so placed in quarantine shall, in lieu of such yellow flag, cause to be hoisted and kept at the fore-top-gallant-mast head, two lighted lanterns, one over the other, under a similar penalty not exceeding twenty pounds.

In case of quarantine, duty of Port Officer.

21. In case of the illness, or other necessary absence, of the health officer, the port officer may give pratique to any vessel whereof the commander or master has signed the health certificate as aforesaid: Provided such vessel has not touched at, or communicated with vessels coming from any infected port, in which case the port officer shall not give pratique, but a competent officer shall be expressly appointed to act for and perform the functions of the health officer.

In what cases Port Officer may give pratique.

22. At any port of this Colony for which no health officer or port officer is appointed, the Resident Magistrate, or any Officer of Customs, or in the absence of any such officer, any Justice of the Peace or Field-cornet at or near such port, may, in the event of the casual arrival of a vessel thereat, act, or depute such competent person to act, as health officer and port officer; and the said resident magistrate, or other officer as aforesaid, and any person by him deputed to act, is hereby authorised and required, as far as circumstances will permit, to perform all the duties assigned by this Act to the health officer and port officer respectively, and is to be considered and obeyed as such.

Powers of magistrates and Justices of the Peace where no Health or Port Officer.

23. The Resident Magistrate, or in the absence of such officer, any Justice of the Peace, at or near any port of this Colony other than Table Bay, is hereby authorised and required to detain any vessel in quarantine, and to prevent all communication therewith in case of actual necessity (such necessity to be certified by the health officer or other persons duly appointed to visit vessels at such port), and shall forthwith report the same to the Colonial Secretary; and the health

Power to quarantine.

No. 10, 1876.

Payment of costs in unfounded and vexatious cases.

5. In all cases brought before any Special Justice of the Peace under this Act it shall be lawful for him, if he shall dismiss the charge on the ground that the same is unfounded and vexatious, to adjudge that the private prosecutor shall pay to the defendant the costs of his defence, the amount of such costs to be taxed and allowed by such Justice of the Peace, and not to exceed the costs which would have been payable were the case a civil one in a Court of Resident Magistrate, and such costs shall be recovered, in default of payment thereof, together with the costs of recovering the same, to be also fixed and allowed by such Justice of the Peace, in like manner as directed by the forty-eighth ⁽¹⁾ section of the said Ordinance No. 9 of 1851, with regard to fines or penalties in that section mentioned.

When a trial should be stopped, and proceedings sent to Resident Magistrate, or a preparatory examination taken.

6. When, in the course of any trial before a Special Justice of the Peace under this Act, it shall appear to such Justice of the Peace that the offence is, from its nature or magnitude, only subject to the jurisdiction, or more proper for the cognizance, of the Court of Resident Magistrate of the district or other superior Court, such Justice of the Peace shall stop the trial, and either transmit the proceedings in the case, with report thereon, to the Resident Magistrate of the district, or commence anew the examination of the person

⁽¹⁾ § 48 of Ordinance 9, 1851:—And be it enacted that when and as often as any offender shall be convicted of any offence against any of the provisions of this Ordinance it shall and may be lawful for the Magistrate or Justice of the Peace convicting such offender to issue his warrant for levying the amount of any fine or penalty imposed upon such offender by distress and sale of the goods of such offender whether such offender shall be in custody by reason of his conviction of such offence or not and for levying also the costs of such distress and sale, and every such warrant shall in substance be agreeable to the form in the schedule to this Ordinance in that behalf set forth, and the overplus if any levied under any such warrant shall be rendered to the said offender; and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the Courts of Resident Magistrate for the sale of goods and chattels taken under the process of execution by such Courts. Provided, always, that as often as any such warrant shall be issued by any Justice of the Peace the person to whom such warrant shall be directed shall for the purpose of such seizure and sale be deemed to be invested with the same rights and obliged to the performance of the same duties and be remunerated at the same rate as the messenger of a Magistrate's Court would have been invested with or obliged to or remunerated at in case the warrant in question had been issued by such Court.

Form of Warrant for Distress and Sale referred to in foregoing section.

To _____, Messenger of the Court of the Resident Magistrate of _____ [or in case the warrant be issued by a Justice of the Peace, To _____, the person to whom the warrant is directed].

Whereas [name of the offender], of _____, was on this day [or on the _____ day of _____ 18] convicted before me of contravening the Ordinance No. 9, 1851, and was duly adjudged to forfeit, as a penalty, the sum of £ _____; this is therefore to authorize and require you that of the goods and chattels of the said _____ you cause to be levied and raised the said sum of £ _____, with the costs of such conviction, amounting to the further sum of £ _____, together with your charges about the same, and return to the Clerk of this Court [or when the warrant is issued by a Justice of the Peace say "return to me"] what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at _____, this day of _____, 18 _____.

(Signed)

_____, Resident Magistrate or
_____, Justice of the Peace.
[as the case may be].

E. F., Clerk of the Court [this is to be omitted when the warrant is issued by a Justice of the Peace].

accused, and the witnesses, as in a preparatory examination, and the proceedings upon and with respect and subsequent to such preparatory examination, shall be the same as those prescribed by law as to ordinary preparatory examinations.

No. 10, 1876.

7. Any Special Justice of the Peace acting under this Act shall have full power and authority by warrant under his hand to commit any person accused of having committed any of the offences in the second section hereof mentioned, whether before or during trial, and any person who may be committed for trial after preparatory examination, as in the last preceding section mentioned, to the nearest gaol or lock-up, to be there detained until liberated in due course of law; and it shall also be lawful for such Justice of the Peace upon the conviction of any such person as aforesaid, by and before him, by like warrant as aforesaid, to commit such convicted person to such gaol or lock-up to be there safely kept until he shall have undergone the punishment awarded, or shall be otherwise lawfully discharged: Provided, however, that no person shall be committed to any gaol or lock-up before trial as aforesaid for any of the offences mentioned in sub-sections A and F of the second section of this Act, unless such Special Justice of the Peace shall have good and reasonable grounds for believing that the offender intends to abscond for the purpose of defeating the ends of justice.

Imprisonment of offenders.

8. In case of there not being any ordinary constable or not sufficient ordinary constables available either to arrest or to convey to such gaol or lock-up any person accused, committed for trial, or convicted as aforesaid, it shall be lawful for the Justice of the Peace to appoint any proper person or persons to be a special constable or special constables for the arrest, custody, or conveyance, as the case may be, of such person to such gaol or lock-up, and every such special constable shall be paid at the same rate as if he had been appointed by a Field-cornet under the Ordinance No. 9 of 1848.

Appointment of special constables.

9. When and as often as any Special Justice of the Peace shall exercise summary jurisdiction under and by virtue of this Act, he shall forthwith, after having disposed of the case, forward to the Registrar of the Supreme Court, or of the Court of the Eastern Districts (according as such case shall be disposed of in the Western or Eastern Districts respectively), the record of the proceedings in the case together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856, shall *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said sections for the convicting Resident Magistrate; and all matters required to be done in the said sections by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Proceedings in cases summarily adjudicated to be forwarded to Registrar of Supreme or Eastern Districts Court, as the case may be.

10. Every appointment of a Special Justice of the Peace under this Act shall be notified in the *Government Gazette*, together with the local limits within which he is to exercise jurisdiction, and shall be during pleasure; and every such Justice of the Peace, upon his appointment, shall take and subscribe the like oaths as are prescribed in and by the Ordinance No. 32 for Justices of the Peace, and shall without any further appointment be in the same position as if he had been appointed a Justice of the Peace under the said Ordinance, all the provisions of which shall apply to such Justice of the Peace.

Appointment of Special Justice and limits of his jurisdiction to be notified in *Gazette*. Oaths to be taken.

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regulation made, or direction given under the provisions of this Act concerning quarantine, he shall knowingly or wilfully be guilty of any breach or neglect of his duty.

- (8) If he shall convey, or remove, or secrete, or conceal for the purpose of conveying or removing, anything from any vessel actually performing quarantine, or from any quarantine station, lazaret, or other place where such thing shall be performing quarantine.
- (9) If not being authorised under this Act or otherwise he shall communicate with any vessel placed under quarantine or with any persons under quarantine on board any vessel or at any quarantine station, lazaret, or other place.
- (10) If being a Superintendent or other person in charge of, or a guard over any vessel, person, or thing performing quarantine, he shall connive at or assist in the breach of any of the provisions of this Act or any regulations made under this Act concerning quarantine, or shall desert from his duty.
- (11) If he shall contravene any of the provisions of this Act, or of any order or regulations made by the Governor under the provisions of this Act, concerning quarantine in respect of which no other penalty shall have been expressly provided.

Powers to arrest persons breaking quarantine.

28. Any person may without warrant arrest any person who shall, contrary to the provisions of this Act, or of any order or regulations made under this Act concerning quarantine, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret or place appointed for performing quarantine, for the purpose of taking such person before any Magistrate or Justice of the Peace. Any Resident Magistrate or Justice of the Peace may grant a warrant for apprehending and conveying any such person to the vessel from which he shall have come or have escaped, or to any vessel or lazaret or place appointed for performing quarantine, or for confining such person in any place of safe custody, not being a public prison, until such person can be conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the Governor as to the disposal of such person. And until such person shall be conveyed to such place or the Governor shall have given such directions as aforesaid, such Resident Magistrate or Justice of the Peace may make any order that may be deemed necessary in that behalf.

Provisions for cleansing and disinfecting.

29. Any health officer, or superintendent of any quarantine station or other place where quarantine is to be performed, may prescribe such measures as may be necessary for cleansing, purifying, and disinfecting any vessel in quarantine, and the passengers and crew thereof, and the cargo therein, and may order the destruction of any clothing or materials which cannot be cleansed, purified or disinfected.

For opening and airing things.

30. All things liable to quarantine under this Act may be opened and aired in such place and for such time and in such manner as shall be directed by the Governor by any order, or by any regulations made under this Act.

Supplies to crews and pas-

31. During the detention of the crew and passengers of any vessel

in quarantine, whether on board or on shore, the commander or master of such vessel shall provide and supply provisions for the said crew and passengers on the same scale as during a voyage. If he shall omit to do so, provisions may be supplied by the superintendent or person in charge of the place at which such vessel is detained, and the expenses incurred in so doing may be recovered by such superintendent or other person, as a debt due from the commander or master, or the owner, or both, and such debt shall be a charge on the vessel.

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sengers of quarantined ships.

PART III.—INFECTIOUS DISEASES AND HOSPITALS.

32. ⁽¹⁾ The Governor may make regulations or give directions for all or any of the following purposes, which regulations and directions shall be acted upon by the local authority immediately any portion of the Colony is affected by or threatened with small-pox, or any epidemic, endemic, infectious, or contagious disease :

Regulations to be made or directions given by Governor to local authority in infected places.

- (1) For house to house visitation.
- (2) For the speedy interment of the dead.
- (3) For the conduct and direction of the route of funerals.
- (4) For providing medical aid and accommodation.
- (5) For the detention and isolation of persons suffering from or under circumstances likely to be infected with such disease, and for preventing the spread of disease.
- (6) For the promotion of cleansing, ventilation, and disinfection.
- (7) For preventing the overcrowding of any house or part of a house so as to be dangerous or injurious to the health of the inmates, whether or not members of the same family.

Any person who contravenes any regulation made by the Governor under this section, or wilfully obstructs any person acting under the authority of or in carrying out any such regulations, shall upon conviction be liable to a penalty not exceeding ten pounds, and in default of payment to imprisonment with or without hard labour for a period not exceeding three months, or to both such fine and such imprisonment.

Penalty for contravention thereof.

33. The local authority shall superintend and see to the execution of such regulations and directions as aforesaid, and shall appoint and pay medical or other officers or persons, and do and provide all such acts, matters and things as may be necessary for mitigating any such disease, and for superintending or aiding in the carrying out of such regulations, or for carrying out the same as the case may require. The local authority may from time to time commence or direct any prosecution or legal proceedings for or in respect of the contravention of this Act or any regulations made under this Act.

Duties of local authority.

34. Where any local authority is of opinion, on the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice, in writing, to the owner or occupier of such house or part thereof, requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice. If the person to whom notice is so

Power to order disinfection.

⁽¹⁾ Thacker v. Doyle, 2, High Court 318, and 1 A. C. 367.

No. 4, 1888.

given fails to comply therewith, he shall be liable to a penalty not exceeding ten pounds and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default. Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof.

Householder
to give notice of
small-pox, &c.

35. When any householder⁽¹⁾ knows that a person within the house occupied by him is suffering from small-pox or any other disease declared by the Governor to be infectious, he shall immediately give notice thereof to the local authority of the place on which he dwells. It shall be the duty of the medical practitioner in attendance in such case to inform the householder as early as possible of the infectious nature of the disease. Any person neglecting or refusing to comply with the provisions of this section, shall be liable to a penalty not exceeding ten pounds.

What local
authority may
do.

36. Any local authority may do any of the following things:—

- (1) Direct the destruction of any bedding, clothing or other articles which have been exposed to infection from any infectious disease, and may give compensation for the same.
- (2) Provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.
- (3) Provide and maintain vehicles suitable for the conveyance of persons suffering under any infectious disease, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Who may be
removed to
hospitals.

37. When any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of such district any person who is suffering from any infectious disease, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel, or who is not under medical treatment by some medical practitioner, may, on a certificate signed by a qualified medical practitioner, and with the consent of the superintending body of such hospital or place, be removed by order of any Resident Magistrate or Justice of the Peace to such hospital or place at the cost of the local authority. An order under this section may be addressed to any constable or member of a police force, and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds.

Penalties for
infected persons
exposing them-
selves.

38. Any person who—

- (1) While suffering from any infectious disease wilfully exposes himself in any street, public place, shop, inn, railway carriage, or public conveyance, or enters any public conveyance without the consent of the owner, conductor or

⁽¹⁾ R. v. Wolff, 2, High Court, 512.

driver thereof, after notifying to such owner, conductor, or driver that he is so suffering; or

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(2) Being in charge of any person so suffering, so exposes such sufferer; or

(3) Gives, lends, sells, transmits or exposes, any bedding, clothing, rags, or other things which have been exposed to infection from any such disease; unless the same shall have been disinfected to the satisfaction of the local authority,

shall be liable to a penalty not exceeding ten pounds; and in default of payment to imprisonment with or without hard labour for any period not exceeding three months, and a person who while suffering from any such disease, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance.

No proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected, provided such transmission be made in accordance with the instructions of the local authority previously obtained.

Exceptions.

39. Any person found in any road, street, or other public place suffering from small-pox, or any disease declared by the Governor to be deemed contagious or infectious, may be summarily removed by any local authority or person authorised to carry the provisions of this Act into operation, to the residence of such diseased person, or if he shall have none, or none in which he could be properly treated for such disease, to any public hospital or lazaret, or to any place appointed by such local authority, for the reception or detention of persons suffering from contagious or infectious disease, and such person may be detained in any such hospital, lazaret, or other place, until it shall be certified by a qualified medical practitioner that he may safely be discharged.

Power of summary removal of infected persons found in public places.

40. Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance, after it has to his knowledge conveyed any person suffering from an infectious disease; and if he fails to do so he shall be liable to a penalty not exceeding ten pounds; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

Disinfection of public vehicles.

41. Any person who knowingly lets for hire any house, room, or part of a house in which any person has been suffering from any infectious disease, without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section, the keeper of any hotel shall be deemed to let for hire part of a house to any person admitted as a guest into such hotel.

Penalties for letting infected premises on hire.

42. Any person letting for hire or showing for the purpose of letting for hire any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a

Penalties for false answers.

No. 4, 1893.

house as to the fact of there being or within six weeks previously having been therein any person suffering from any infectious disease, knowingly makes a false answer to such question, shall be liable to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding three months.

Powers of local authority to provide hospitals.

43. Any local authority may provide hospitals or temporary places for the reception of the sick, or persons who may have come in contact with the sick, and for that purpose may

- (1) Build such hospitals or places of reception; or
- (2) Contract for the use of any premises for the purpose of such hospital or place of reception; or
- (3) Enter into any agreement with any person for the reception of the sick on payment of such annual or other sum as may be agreed upon.

Two or more local authorities may combine in providing a common hospital.

Expenses by local authority.

44. Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due from such patient to the local authority, and may be recovered from him or from his estate in the event of his dying in such hospital or place.

Powers of entry, &c.

45. The officers of any local authority, or any person authorised in writing by any such officer, shall have power to enter on any premises for the purpose of carrying out, or superintending the carrying out, of the provisions of this Act, or any regulations framed under this Act.

Penalties of resistance.

46. Any person wilfully refusing entrance to any officer of a local authority or any person duly authorised in writing as aforesaid, to any premises, and any person obstructing, or using foul, violent, or insulting language to any such officer or person while in the execution of any of the provisions of this Act, or any regulation made under this Act, shall upon conviction, be liable to a penalty not exceeding ten pounds, and in default of payment, to imprisonment, with or without hard labour, for any period not exceeding three months.

Penalties for non-vaccinated person refusing to be vaccinated.

47. In case of the prevalence of small-pox the local authority may require any person within the limits over which such local authority shall have authority, to give proof that such person has been successfully vaccinated, and if any person who shall not give proof of having been vaccinated, shall refuse to allow himself to be vaccinated, such person shall, upon conviction, be liable successively in respect of each refusal to a penalty not exceeding two pounds, or, in default of payment, to imprisonment for any period not exceeding seven days.

Removal of bodies of persons dying of infectious disease.

48. Where the body of any person who has died of any infectious disease is retained in a room where persons live or sleep, or where any dead body is in such a state as to endanger the health of the inmates of the house or room in which such body is retained, any Resident Magistrate or Justice of the Peace may, upon production of a certificate, signed by a qualified medical practitioner, order the body to be removed at the cost of the local authority to such place as such Magistrate or Justice of the Peace may direct, and may direct the body to be buried within a time to be stated in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so stated, and do bury the same, it shall be the

duty of the local authority to cause such body to be buried, but any expense incurred in the removal and burial of the body may be recovered from any person who but for the removal of such body and its burial by the local authority would have been obliged to cause the same to be buried. Any person disobeying or obstructing the execution of any such order made by a Resident Magistrate or Justice of the Peace shall be liable to a penalty not exceeding ten pounds.

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49. If at any time it shall appear to the Governor that any local authority has failed or neglected or refused to carry out any of the provisions of this Act, or any regulations made under this Act, which it was the duty of such local authority to carry out, the Governor may declare all the powers and authorities vested in such local authority under this Act, to be thenceforth transferred and vested in such other local authority, or in a board consisting of not more than five persons as he may appoint, and may from time to time revoke, alter, or vary any order or direction made under the provisions of this section.

When Governor may revoke power of local authority.

50. All district surgeons and medical officers shall give any information they may acquire in regard to the diseases referred to in this Act to the local authority forthwith, and shall be bound to attend to or inspect any case or place, or report on any matter relative to this Act, and the district surgeons shall be entitled to charge and receive from the local authority in all such cases a fee of two shillings and sixpence for each certificate required, and other medical officers a fee of five shillings, actual travelling expenses to be paid in all cases over and above such fees.

Duties of District Surgeon and others.

PART IV.—VACCINATION.

51. In this part of this Act the words and expressions following shall have the meanings hereafter respectively attached to them, that is to say:—

Interpretation.

The word "parent" shall include the father and mother of a legitimate child, and the mother of an illegitimate child.

The words "medical practitioner" shall mean a medical practitioner authorized to practice in this Colony, under any law now or hereafter to be in force in this Colony.

The term "lymph" shall mean lymph taken from a heifer or from a fully formed vaccine vesicle, on the day week after vaccination, and before any areola has been formed; the subject from which such vaccine lymph is taken being a healthy infant or child who has not previously been vaccinated, or a healthy young heifer.

52. The Colonial Secretary shall at all times cause to be kept at such places as the Governor shall appoint, a supply of pure lymph for the purpose of furnishing on application and without payment to district surgeons and to medical practitioners such reasonable quantities of such lymph as may be required. The expense of providing, keeping, and supplying such lymph shall be defrayed out of moneys provided by Parliament for the purpose of this Act.

District Surgeons to be supplied with lymph.

53. The Governor may issue regulations providing for the vaccination and revaccination of persons gratuitously by the district surgeons, or persons specially appointed as vaccinators, and for appointing places for the performance of vaccination, and also for giving from time to time notice of the days and hours at which the district surgeon, or other vaccinator appointed, will attend at such place to vaccinate

Regulations for gratuitous vaccination.

- No. 4, 1893. all persons not already successfully vaccinated who may then appear there.
- Vaccinated person to attend to be inspected.** 54. When the operation of vaccinating or revaccinating any person over the age of fourteen years is performed by the district surgeon or vaccinator appointed by the Governor without charge to such person, the district surgeon or vaccinator may require such person to attend at the same or some other place on the same day in the following week, in order that such person may be inspected, and the result of the operation ascertained: and the district surgeon or vaccinator shall, if required, deliver to the person vaccinated or revaccinated who shall attend, a certificate stating the result of the operation. If any such person shall fail to attend, or to permit the district surgeon or vaccinator to ascertain the result of the operation, he shall be liable to a penalty not exceeding ten shillings.
- Penalty for neglect.**
- Children to be vaccinated within one year of birth.** 55. The parent of every child born in this Colony after the first day of January, one thousand eight hundred and eighty-four, shall within twelve months after the birth of such child, or when by reason of the death, illness, absence, or inability of the parent or other cause, any other person shall have the custody of such child, such person shall within twelve months after receiving the custody of such child, cause such child to be vaccinated by some medical practitioner. As often as any such child shall be taken to a district surgeon, or person specially appointed by the Governor as vaccinator, such district surgeon or vaccinator shall, subject to any regulations framed by the Governor, vaccinate such child without charge.
- Vaccinated child to be produced for inspection a week after vaccination.** 56. In every case in which a child shall be vaccinated by a district surgeon or vaccinator appointed by the Governor free of charge, the parent or other person, as the case may be, having custody of such child, shall cause such child to be taken upon the same day in the following week to the district surgeon or vaccinator by whom the operation was performed, in order that he may inspect such child and ascertain by inspection the result of the operation; and if he sees fit take from such child lymph for the performance of other operations; and in the event of the operation being unsuccessful such parent or other person shall, if the district surgeon or vaccinator so direct, cause the child to be forthwith again vaccinated, and subsequently inspected as on the previous occasion.
- Unsuccessful vaccination.** 57. If any district surgeon, vaccinator specially appointed or medical practitioner shall be of opinion that any child whom he has three times unsuccessfully vaccinated, is not susceptible of successful vaccination, or that a child, brought to him for vaccination, has had the small-pox, he shall deliver to the parent of such child a certificate according to the fact; and the parent or such person as aforesaid shall thereafter not be required to cause such child to be vaccinated.
- Penalty for refusing to have lymph extracted.** 58. Every parent or person having the custody of any child under the age of fourteen years who shall neglect to have or cause such child to be vaccinated, or, after vaccination, gratuitously to be inspected according to the provisions in this Act respectively contained, or who shall refuse to permit the district surgeon or vaccinator specially appointed to remove or retain a reasonable quantity of lymph from the arm of any such child gratuitously vaccinated according to the provisions of this part of this Act, and shall not in any of the said cases render a reasonable excuse for such neglect shall, upon conviction, be liable to a penalty not exceeding two pounds.

59. If any Resident Magistrate shall have information or have reason to believe that any child under the age of fourteen years within his district has not been successfully vaccinated, he may cause notice to be given to the parent or person having the custody of such child to procure its being vaccinated within a period to be stated, not being less than seven days, and if such notice be disregarded such Resident Magistrate may summon such parent or person to appear with the child, before him, at a certain time and place, and if the Resident Magistrate shall find after such examination as he shall deem necessary, that the child has not been vaccinated nor has already had the small-pox he may, if he see fit, make an order directing the child to be vaccinated within a certain time. If at the expiration of such time the child shall not have been vaccinated or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be liable to a penalty not exceeding two pounds. And if any parent or other person as aforesaid, shall fail to appear to any such summons, or to produce such child, such parent or person shall be liable in respect of each act and successively to a penalty not exceeding two pounds.

No. 4, 1888.

Duties of Magistrates when children suspected of not being vaccinated.

60. No person who has not been vaccinated shall be appointed, or if appointed prior to the taking effect of this Act, promoted to any office in the public service.

No unvaccinated person eligible for civil service.

61. Every child admitted to any school which shall be maintained or aided by any grant from public funds, shall be vaccinated by the district surgeon or a vaccinator specially appointed as aforesaid, unless such child shall have been previously vaccinated.

Children attending public schools.

62. The Governor may order the inmates of prisons, convict stations, lunatic asylums, reformatories, hospitals, and other places where the poor or sick are received, to be vaccinated upon or after their entrance and may declare an age after which vaccination or re-vaccination under this section shall not be compulsory.

Inmates of prisons, &c., &c.

PART V.—CEMETERIES.

63. No cemetery or burial ground shall hereafter be established or opened in, or within the limits assigned for, any city, town or village in this Colony without the leave of the Governor previously obtained.

No cemetery to be established without leave from Governor.

64. If it shall be made to appear to the Governor that burials in any cemetery or burial ground now existing or hereafter to be established are, or are likely to be, injurious to the public health, the Governor may by an order or notice to be published in the *Government Gazette* direct that after a time to be mentioned in such order, not being less than six months from the date thereof, burials in such cemetery or burial ground shall be discontinued, wholly or subject to any exceptions or qualifications mentioned in the same or any subsequent order or notice, and may from time to time postpone the time mentioned in such order or notice for the discontinuance of burials, or otherwise alter or vary any such order or notice.

How and when cemeteries may be closed.

65. If after the expiration of the time mentioned in any such order or notice, any person shall bury any body in, or shall act or assist in, or shall suffer or permit the burial of any body in any cemetery or burial ground, or within the limits in which burials have by any such order or notice been ordered to be discontinued or prohibited, such

Penalties for burials after such closing.

No. 4, 1883. person shall upon conviction be liable to a penalty not exceeding fifty pounds.

Short Title. 66. This Act may be cited as the "Public Health Act, 1883."

THE FIRST SCHEDULE.

Number and Year.	Title.	Extent of Repeal.
No. 1, 1856.	For preventing the spread of Contagious or Infectious Diseases.	The whole.
No. 16, 1857.	To Consolidate the Laws relating to Quarantine and Port Regulations.	The Quarantine Regulations enacted by Sections three to eighteen inclusive and the Schedule A.

THE SECOND SCHEDULE.

Form of Declaration of Health.

1. Name of vessel and commander or master.
 2. From what port and whither bound?
 3. When sailed.
 4. At what intermediate ports or places touched on the voyage, and date of sailing thence?
 5. With what vessel communicated during the voyage.
 6. Date of each such communication.
 7. Did any contagious or infectious disease prevail at the port from which you sailed? If so, what was the nature of such disease?
 8. If you touched at any port or communicated with any vessel on the voyage was any contagious or infectious disease prevailing at such port, or on board such vessel? If so state the nature of the disease.
 9. Have you any sickness on board at present? If so, what is that sickness, and what number of cases have you under treatment?
 10. Has any case of small-pox, or any form of eruptive skin disease, fever, scarlatina, plague, cholera, or other infectious or contagious disease, occurred on board during the voyage? If so, state the number of cases, and the dates of attack and convalescence or termination of the first and last cases of the disease.
 11. Have the clothes and bedding used by those persons who have suffered from contagious or infectious disease during the voyage been either destroyed or passed through boiling water?
 12. What means, if any, were adopted for preventing the spread of any infectious or contagious disease which occurred during the voyage?
- I do hereby declare that the several answers to the questions con-

tained in the above Schedule are correct, and that the vessel under my command is in a perfectly healthy state. No. 28, 1883.

Given under my hand this _____ day of _____ 18

Commander or Master.

NOTE—If the above declaration of health contains any false statement or answer to any question therein inserted, the commander or master signing the same will be liable to a penalty not exceeding £200, or in default of payment, to imprisonment with or without hard labour for a period not exceeding twelve months, or to both such penalty and such imprisonment. If the vessel is not in a healthy state the words “and that the vessel under my command is in a perfectly healthy state” are to be erased.

No. 41, 1885.] ACT [August, 11, 1885.

To Amend the “Public Health Act, 1883.”

WHEREAS it is expedient in certain respects to amend the Act No. 4 of 1883, commonly called the “Public Health Act, 1883”: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. The third section of the said Act is hereby repealed. Section 3 of Act 4 of 1883, repealed.
2. It shall be lawful for the Governor, out of such moneys as may be appropriated by Parliament for the purpose, to advance to any local authority for the purposes of the said Act such sum as he may deem desirable: and one-half of such amount as shall be satisfactorily proved to have been expended by any local authority for the purposes of preventing the spread of or suppressing contagious or infectious disease, or for quarantine purposes, shall be paid out of the Public Treasury. Governor may make advances to local authority.
Half the amount expended for certain purposes of Act 4 of 1883 to be paid by Treasury.

* * * * *

No. 28, 1883 (¹).] ACT [September 27, 1883.

To Amend and Consolidate the Laws regulating the Sale of Intoxicating Liquors.

WHEREAS it is expedient to amend and consolidate the laws regulating the sale of intoxicating liquors: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows: Preamble.

1. The laws mentioned in the first schedule to this Act, to the extent to which the same are therein expressed to be repealed, shall be and the same are hereby repealed, except as to offences committed against, or proceedings commenced or pending under any of such repealed laws, and except as to subsisting licences which shall, during the interval between the coming into operation of this Act and the expiration of such licences respectively, be deemed and judged of in respect of the sales and dealings which they shall be held to authorise, and the liabilities which the holders thereof shall incur, as if the said repealed laws still remained in force. Repeal of pugnant Law

(¹) See Acts 44—1885, 42—1887, and 25—1891, *infra*.

No. 28, 1883.

Exemptions
from operation
of this Act.

2. Nothing in this Act shall apply

- (1) To any person selling any spirituous or distilled perfume or perfumery ;
- (2) To any apothecary, chemist, or druggist who may administer or sell any spirituous, distilled, or fermented liquors, for medicinal purposes ;
- (3) ⁽¹⁾ To any person engaged in agriculture who may sell, upon the property occupied by him, intoxicating liquors in quantities of not less than seven gallons at one time, such liquors being the produce of grapes or other fruits respectively of his own growth or purchased or procured by him : Provided that such liquors shall be distilled or made upon such property and shall not be drunk or consumed on his premises ;
- (4) To any such person as in the last preceding sub-section mentioned, who may sell any liquors, being such produce as aforesaid, upon any public market, or to any licensed dealer ;
- (5) To any sheriff, messenger, or other officer acting under the authority of any court, judge, or magistrate ; or to any officer of customs, in the exercise or discharge of his duty ;
- (6) To any auctioneer selling by auction liquor in quantities not less than such as are authorised to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer, or belonging to any such person as is mentioned in sub-section (3) upon the property occupied by such person.
- (7) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors, subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively ⁽²⁾.

Interpretation
clause.

3. In this Act, if not inconsistent with the context :

" Intoxicating liquor " or " liquor " means any spirits, wine, ale, beer, porter, cider, perry, or other fermented, distilled, spirituous or malt liquor of an intoxicating nature, and every drink with which any such liquor shall have been mixed.

" Licence " means any licence for the sale of liquors granted under this or any other Act now or hereafter to be in force relating to the sale of such liquors.

" Licensing Court " or " court " means the Licensing Court of the district wherein a licence is intended to take effect.

LICENCES.

Licence to be
issued by Dis-
tributor of
Stamps.

4. The licences authorised to be granted under this Act shall be issued by the Distributors of Stamps, respectively, in Cape Town, and in the several districts of the Colony, and such distributors shall, in regard to the issue of such licences, and any privileges allowed or

⁽¹⁾ Re-enacted by § 27, Act 25, 1891.⁽²⁾ Printed as amended by § 2, Act 44, 1885.

granted to the holders thereof, to be noted or endorsed upon any licence, conform to the provisions of this Act, and any regulations to be made by the Governor relating to the performance of their duties under this Act. No. 23, 1883.

5. For or in respect of licences granted or renewed, or transfers or removals of licences or privileges allowed to the holders of licences under and in terms of this Act there shall be payable and paid to the Public Treasury such sums of money to be collected by means of stamps as are prescribed in the second schedule hereto. Fees for licences as in Schedule II.

6. Licences under this Act may be granted of the several descriptions following, that is to say:— Description of licences.

- (1) Wholesale Licences.
- (2) Retail Licences.
- (3) Bottle Licences.
- (4) Temporary Licences.
- (5) Club Licences.

7. In regard to licences granted under this Act the following definitions and provisions shall apply: Definitions and provisions in regard to licences.

- (1) A "wholesale licence" shall authorise a dealer to sell and deliver liquors in quantities of not less than five gallons if in cask, or one unbroken case containing not less than twelve reputed quart, or twenty-four reputed pint bottles, to be delivered at one time, such liquors not to be consumed in or upon the seller's house or premises.
- (2) A "retail licence" shall authorise the sale of liquor in any quantity on the premises therein specified between the hours of six ⁽¹⁾ in the morning and nine at night on any day other than Sunday, Christmas Day, and Good Friday; or between such other hours as may be fixed by the Licensing Court under the provisions of this Act; such liquors according to the conditions ⁽²⁾ of the licence to be consumed in or upon the seller's house or premises, or otherwise.
- (3) [Repealed by Act No. 25, 1891, *infra*.]
- (4) A "temporary licence" shall authorise the dealer, being also the holder of a retail licence, to sell liquors by retail at any place of recreation or public amusement for the period stated therein, subject to such restrictions and conditions as the Resident Magistrate authorising the issue of the same shall think fit.
- (5) ⁽³⁾ A "club licence" shall authorise the sale and supply of liquor in any quantity to the members of a club, at any time, for consumption on the premises; provided that no place of accommodation, entertainment or refreshment shall be considered a club where others than members or the invited guests of such members are allowed entry or accommodation, or where others than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.

8. No licence shall be granted or transferred to any person or to the wife of any person Who disqualified from obtaining licences.

⁽¹⁾ Seven. See Act 25, 1891, § 4.

⁽²⁾ *Pearson v. Licensing Court of Uitenhage*, 3 Juta 363.

⁽³⁾ See Act 44, 1885, § § 4, 6.

No. 28, 1883.

- (1) Holding office or appointment under Government;
- (2) Occupying premises of which any constable or member of a police force is the proprietor or landlord, or in which such constable or member has any interest;
- (3) Convicted of selling liquor without a licence until after a period of one year subsequent to the date of such conviction;
- (4) Licensed to sell or otherwise deal in diamonds or keeping a native eating house in any district in which the Diamond Trade Act of 1882 is or shall hereafter be in operation.

Licensed places to have entrance to public street, &c. 9. No retail licence or bottle licence shall authorise the sale of liquors in any town or village otherwise than in premises having the bar entrance opening in or towards a public street or thoroughfare. No licence shall authorise the sale by auction of liquors in quantities less than such as may be sold under a wholesale licence.

Club licences. 10. Club licences may be obtained at any time upon application to the Distributors of Stamps, in the district in which the club premises are situated.

Every club licence shall be issued to the chief manager or steward of the club. No transfer of any such licence shall be necessary upon any change of any such manager or steward, but the person for the time being holding any such office shall be entitled to the privileges granted by the licence, and subject to all duties and liabilities imposed upon the holder thereof.

When certificate of licensing court not required. 11. No certificate from a Licensing Court shall be required in respect of the granting of the following licences:—

A wholesale licence for the sale of liquors in any municipality, or in any town or village which is the seat of a court of Resident Magistrate: or

A licence for the sale of liquors at any railway refreshment room: or

A temporary licence: or

A club licence.

WHOLESALE LICENCES.

Within short limits wholesale licences to operate. 12. Any person may upon application to the Distributor of Stamps obtain a wholesale licence for the sale of intoxicating liquors within the limits prescribed for any municipality or within the limits of any town or village which shall be the seat of a Court of Resident Magistrate: and for the purposes of this section the limits of any such town or village, not being a municipality, shall if defined for the purposes of the "Villages Management Act, 1881," be such limits, and if not so defined, shall be deemed to be a circle of two miles in diameter, having the Court-room of the Resident Magistrate's Court for its centre.

Certificate when licence is for place beyond Municipality, town or village. 13. No wholesale licence for the sale of liquors beyond the limits of any municipality or of any town or village as in the last preceding section defined, shall be granted except upon the certificate of a Licensing Court, as in this Act provided.

Companies. 14. Wholesale licences may be issued in the name of a company or co-partnership where two or more persons carry on business as a company or co-partnership in the same house or premises.

Number of wholesale stores within two miles, unlimited. 15. Any person holding a wholesale licence may store any liquors in any number of stores or places approved of by the Resident

Magistrate and described in or endorsed upon the licence, but no one of such stores or places shall be distant from any other such stores or places more than two miles. No. 28, 1893.

16. Any auctioneer having a wholesale licence may sell by auction liquors at any sale held by him. Auctioneers.

LICENCES ON RAILWAYS.

17. Licences for the sale of intoxicating liquors at any Railway Station Refreshment Room, upon property owned or occupied by the Government of the Colony for railway purposes, shall be granted, and shall be obtainable upon and subject to the conditions following:— Conditions on which licences to be issued for railway refreshment rooms.

- (1) The lessee or occupier may apply in writing to the Commissioner of Crown Lands and Public Works, or any officer of the Railway Department whom the said Commissioner may appoint for that purpose, for a certificate to obtain a licence.
- (2) The said Commissioner or such officer may, if he sees fit, issue a certificate authorising the grant of a retail licence by the proper stamp officer to the applicant for any period not exceeding one year to expire on the thirty-first day of March next after issue.
- (3) Every licence so granted shall be renewable by the like authority for any period not exceeding one year.
- (4) Any licence so granted may be transferred by the authority of the said Commissioner or such officer as aforesaid.
- (5) [Repealed by Act 25, 1891, § 24, *infra*.]
- (6) Any licence granted under the authority of any such certificate may at any time be cancelled by the said Commissioner.
- (7) For or in respect of any such licence issued for a year there shall be paid such sum as is prescribed by the said second Schedule, and for any period less than a year one-twelfth of the said sum for every month, for which or the part of which the said licence is granted.

TEMPORARY LICENCES.

18. Any person being the holder of a retail licence may apply to the Resident Magistrate for a certificate authorising the Distributor of Stamps to issue a temporary licence for the sale of liquors at any place of recreation or amusement. Place of re-creation.

19. The Resident Magistrate to whom any such application shall be made may, if he shall see fit, grant a certificate wherein shall be stated the name of the applicant, the place where such temporary licence is to be granted, the number of days during which sales are authorised, and such restrictions and conditions as such Magistrate may impose; the time mentioned in any such certificate may be extended, but the licence shall not endure for longer than twenty-one (1) days in all. What Magistrate's certificate must specify.

NATIVE LOCATIONS AND AREAS.

20. No licence shall be issued for the sale of liquor within the limits of any native location established or to be established under the No licence in Native Locations without permission of Governor.

(1) Printed as amended by Act 44, 1885, § 6.

No. 28, 1883. provisions of the "Native Locations Act, 1876," or the "Native Locations Amendment Act, 1878," or any Act hereafter to be passed for regulating native locations except with the permission of the Governor.

Governor may define area within which no licence shall issue.

21. In districts where aboriginal natives of South Africa are located or resident, or are congregated upon public or other works or mines the Governor may define areas within the limits of which it shall not be competent for any Licensing Court to authorise the grant of a licence for the sale of liquor except with the permission of the Governor. Any licence issued in contravention of this and the last preceding section shall be void.

Liquor not to be supplied to Native Locations, &c.

22. Save and except as to any liquor administered medicinally no person shall sell, supply, or give to any aboriginal native any liquor within the limits of any native location or area proclaimed as afore-said. Any person who shall sell, supply, or give liquor in contravention of this section shall be liable upon conviction to the same penalties and forfeiture of licence, respectively, as are provided for selling liquor without a licence.

RESTRICTIONS UPON THE ISSUE OF NEW LICENCES.

How objections to increase of licence to be made.

23. The voters registered for the election of Members of Parliament within the limits of any field-cornetcy, municipality, or place where the "Villages Management Act, 1881," is in operation, or, where a municipality is divided into wards, within the limits of any ward, may not less than four days before the annual meeting of the Licensing Court lodge with the Resident Magistrate of the district in which such voters reside, a memorial or memorials objecting to the increase of the number of licensed premises for the sale of liquor under any retail licence or bottle licence or under licences of both descriptions within the limits of such field-cornetcy, municipality, or place, or ward of a municipality as the case may be.⁽¹⁾

What provisions applicable.

24. ⁽²⁾ With respect to every such memorial the following provisions shall apply:—

- (1) It may be in the form marked A in the third Schedule, or to the like effect.
- (2) It shall contain the name in full of every voter signing the same, corresponding to the name as registered on the list of registered voters, and his place of residence or business.
- (3) Annexed or appended to such memorial there shall be a declaration signed by the person by whom the signatures were collected in the form as nearly as is material marked B in the said third Schedule.

False representations, &c.

25. Any person who shall

- (1) Falsely append the name of any other voter to any such memorial; or
- (2) Make any declaration in form or in substance corresponding to the form marked B in the third Schedule containing any wilfully false statement,

shall be liable, upon conviction, to a penalty not exceeding fifty pounds, and in default of payment to imprisonment with or without hard labour for any period not exceeding six months, or to both such penalty and such imprisonment.

⁽¹⁾ See § 12, Act 44, 1885.

⁽²⁾ See §§ 13, 14, Act 25, 1891, *infra*.

26. The Resident Magistrate receiving any such memorial shall cause the names appearing thereon to be compared with the list of registered voters, and he may strike off therefrom any names which are either illegible, or do not appear in the list of registered voters, or do not correspond with any name in such list, and shall ascertain and certify the number of names of registered voters appearing properly to be appended to such memorial: Provided that any person whose name has been so struck off may appear in person before the Resident Magistrate, or before the Licensing Court, and upon satisfying such Magistrate or Court that he is a registered voter, and signed the said memorial, his name may be restored: and any person may, in like manner, appear and have his name withdrawn, or, if forged or improperly appended, struck off.

No. 26, 1893.

Magistrate to strike off names not being those of registered voters.

27. If it shall appear that such a majority (as hereinafter mentioned) of the voters registered within the limits of the Field-cornetcy or other locality in question object to the grant of new licence increasing the number of licensed premises as aforesaid, then it shall not be competent for the Licensing Court to grant any certificate which shall have the effect of increasing the number of licensed premises of the description referred to in the memorial or memorials.

Majority required to prevent increase of licences.

- (1) During one year then ensuing, if such majority shall exceed one-half of the voters then registered within such limits.

LICENSING COURTS.

28. A Court for the consideration and determination of applications for or relating to the granting, renewal or transfer of licences for the sale of intoxicating liquors is hereby constituted, and shall be held in and for each district of the Colony.

Licensing Court.

Such Court shall consist of

Constitution thereof.

- (1) The Resident Magistrate, or in the absence of the Resident Magistrate the Assistant Resident Magistrate (if any).
- (2) The mayor, or chairman of any or each municipality within the district, unless disqualified under the provisions of this Act, and in case such mayor or chairman shall be disqualified, the council or commissioners of the municipality may elect one of their number instead.
- (3) Three members of the Divisional Council of the division which includes such district, to be chosen in the manner provided by this Act.
- (4) Such Justices of the Peace, not being more than two in number, as the Governor may appoint to be members: Provided that no Justice of the Peace being in the Civil Service shall be so appointed, or shall continue to be a member if he shall enter the Civil Service after appointment.

29. The following persons shall be disqualified ⁽¹⁾ for election or appointment, or if elected or appointed, of continuing, as members of a Licensing Court, that is to say:

Who disqualified from being members of licensing court.

- (1) The holder of any licence for the sale of intoxicating liquors.
- (2) Any brewer or distiller, other than an agriculturist distilling only from fruit the produce of his own property or purchased by him.

(1) Dixon v. Kimberley Licensing Court, 2 High Court 500; Hagemeyer v. Kimberley Licensing Court 4 High Court 26.

No. 23, 1893.

- (3) Any person interested or concerned in partnership with any holder of such licence as aforesaid, or with any brewer, or distiller.
- (4) Any paid officer, or agent of any co-partnership or society interested in the sale or the prevention of the sale of intoxicating liquors.
- (5) Any person employed, directly or indirectly, as an agent for the purpose of making application for a licence for any other person, or any partner of any person so employed as an agent.

And no person being the owner or landlord of, or the agent or manager of or a partner in, any trade or calling carried on upon any premises licensed or about to be licensed, or the holder of any mortgage bond upon such premises, shall take part in the discussion or adjudication upon any application for or relating to any licence for such premises.

Penalty.

Any person so disqualified acting or sitting as a member of a Licensing Court shall be liable to a penalty not exceeding fifty pounds for every offence.

Divisional Council to elect three members of court.

30. Before the last day of February in every year, and as often as a vacancy shall occur, the Divisional Council of the division which includes one or more districts may at a duly convened meeting thereof, by a majority of the votes of the members present, elect three members of such council to be members of the Licensing Court for the district, or three members for each district in case more than one district shall be included in such division.

Annual appointment of J.P.s as members.

31. The Justices of the Peace to be appointed members of the Licensing Court by the Governor as aforesaid shall be appointed annually, or on the occurrence of any vacancy.

Duration of office.

32. Every member of the Divisional Council so elected, and every Justice so appointed as aforesaid, shall hold office until the last day of December in the year in which he is appointed, unless his office shall be vacated by death, resignation, ceasing to be a member of such council, or Justice of the Peace, or to reside in the division or district, as the case may be.

Days of meetings of the court.

33. A meeting of the Licensing Court open to the public shall be held in each district on the first Wednesday in the months of March and September in each year, for the purpose of taking into consideration all applications for the granting of such licences as require a certificate from such court, to authorise their issue, and for the renewal, transfer or removal of any licences for or in respect of which proper notice shall have been given.

The meeting to be held in the month of March shall be the "annual licensing meeting."

Quorum.

34. Three members of a Licensing Court shall form a quorum for the dispatch of business.

Adjournment in absence of quorum.

If a quorum be not present at any licensing meeting on the day appointed or advertised, or at any adjournment of a meeting on the appointed day, the said meeting or adjournment shall stand adjourned from day to day until a quorum can be present to hold such meeting.

Adjournment generally.

35. Any meeting of a Licensing Court may be adjourned from time to time as such court may determine.

President of court.

36. The Resident Magistrate shall, if present, preside at every

meeting of the Licensing Court; in the absence of the Resident Magistrate, the Assistant Resident Magistrate (if any) shall preside; and in case there shall be no such Assistant Magistrate present, the members present shall elect one of their number to preside.

No. 28, 1886.

The officer or person presiding shall in case of an equality of votes have a casting as well as a deliberative vote.

37. The Magistrate or member presiding at any meeting of the Licensing Court shall, within seven days, cause to be forwarded to the Treasurer of the Colony and the Distributor of Stamps of the district, a list signed by him specifying the names and places of residence of all persons to whom certificates shall have been granted by the court for obtaining or renewing licences, and the nature of the licence authorised to be granted or renewed.

Lists of certificates to be sent to distributor of stamps.

38. The Licensing Court may, as a condition ⁽¹⁾ of the granting of any retail licence, require that the holder thereof shall, during the continuance of his licence, provide for the accommodation of travellers such number of rooms and stabling for such number of horses as such court may deem necessary for the convenience of the public: and may also require such holder to make provision for sufficient means of egress in case of fire, and for proper drainage and sanitary arrangements and conveniences upon the licensed premises.

Power to insist on accommodation for travellers.

39. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence, on payment of such additional sum as may be prescribed in that behalf, an extension of the time prescribed for the sale of liquors until not later than twelve o'clock at night, or authority to keep open his licensed house during such hours of Sunday, ⁽²⁾ Christmas Day, or Good Friday as such court shall think fit for the refreshment of *bona fide* travellers. Such extension or authority shall respectively be termed "midnight privileges" and "Sunday privileges."⁽³⁾

"Midnight" and "Sunday" privileges.

40. When any Licensing Court shall deem it necessary ⁽³⁾ to take evidence respecting any question to be determined by such court, such evidence shall be given on oath (which oath the person presiding is hereby authorised to administer) and shall be filed of record in the office of the Resident Magistrate of the district.

Evidence before court on oath.

41. If any person shall, upon any examination before any Licensing Court, wilfully and corruptly give false evidence, such person shall be deemed and taken to be guilty of perjury.

Perjury.

APPLICATIONS FOR OR RELATING TO LICENCES.

42. On or before the last day of the months of January and July any person desiring to obtain at the next licensing meeting

When and how applications for licences to be made.

A wholesale licence in respect of the issue of which a certificate is required from the Licensing Court: or

A retail licence in respect of the issue of which such certificate as aforesaid is required: or

A bottle licence: or

⁽¹⁾ *Crosbie v. Kimberley Licensing Court*, 2 High Court, 502; *Spooner v. Kimberley Licensing Court*, 4 High Court, 41.

⁽²⁾ See Act 44, 1885, §§ 1 and 7, and also § 79 of this Act.

⁽³⁾ *Dixon v. Kimberley Licensing Court*, 2 High Court, 500; *Kaufmann v. Kimberley Licensing Court*, 2 High Court, 531; *Kemp v. Kimberley Licensing Court*, 2 High Court, 448.

No. 28, 1893.

The renewal of any licence⁽¹⁾: or

The removal of any licence from the licensed premises to any other premises in the same district: or

The transfer of a licence by the holder to any other person, may make application, in writing, addressed to the Resident Magistrate of the district setting forth the nature or description of the licence required to be obtained, renewed, removed, or transferred, as the case may be, and of the place, stating the number or name (if any) of the house, and the street or road where the business is intended to be or is being carried on, or in case of the transfer of a licence the name of the person to whom the same is desired to be transferred.

Magistrate to
post notice of
applications.

43. The Resident Magistrate receiving any such applications as are in the last preceding section mentioned shall cause a notice to be posted in some conspicuous place at or in his office and to be published in some newspaper circulating in the district in which the court is held, containing the name of the applicant, nature of the application, description of the premises referred to in the application, the day on which and the place where the court will sit for hearing such application.

Such notice shall be posted and published fourteen days at least before the sitting of the said court, and a copy thereof shall be sent by post or otherwise to every member constituting such court: Provided that no licence authorised to be granted by any such court shall be capable of being questioned by reason that any such notice was not duly posted, published, or sent as aforesaid.

Cases in which
Attorney-
General may
authorise appli-
cations not made
in proper time
to be considered.

44. In case any application for the granting, removal, renewal, or transfer of any licence which ought, under the provisions of this Act, to have been made on or before the last day of January or July, as the case may be, shall through inadvertence not be made in due time, but shall be made within ten days after the appointed day, the Attorney-General may, if he shall see fit, authorise the consideration of such application by the Licensing Court at the next meeting or any adjournment thereof, upon condition of payment in case the application shall be granted or allowed of such sum as the Attorney-General may determine, not being less than five pounds, and upon such terms, as to notice to be given, as the said Attorney-General may prescribe.

Such sum of money shall be denoted by stamps, to be affixed to the licence, issued and cancelled as by law required.

In case of
death, &c., of
licensed person.

45. In case the applicant for any licence shall die, or shall become insolvent after applying for the grant or renewal of a licence, but on or before the day for considering such application by the Licensing Court, such court may, if it shall think fit, grant a certificate for such licence to the widow of any deceased applicant, or to the executor, curator bonis, or trustee, as the case may be, of the estate of such applicant.

Who may
object to
licences or re-
newals.

46. Any chief constable or member of a police force, and any person residing in the city, town, village, or field-cornetcy wherein a licence or a renewal of a licence is applied for, may object⁽²⁾ in writing

(1) Printed as amended by §5, Act 25, 1891, *infra*.

(2) Dixon v. Kimberley Licensing Court, 2 High Court, 500; Kaufmann v. Kimberley Licensing Court, 2 High Court, 531; Kemp v. Kimberley Licensing Court, 2 High Court, 448.

or personally at any meeting of a Licensing Court to the granting or renewal of such licence. No. 28, 1882.

OBJECTIONS.

47. The objections which may be taken to the granting of a licence may be one or more of the following :— What objections may be made.

- (1) That the applicant is of bad fame or character, or of drunken habits, or has previously forfeited a licence, or has been convicted of selling liquor without a licence within a period of three years; or
- (2) That the premises in respect of which the application is made are out of repair, or have not reasonable accommodation.
- (3) That the licensing thereof is not required in the neighbourhood, or that the premises are in the vicinity of a place of public worship, hospital, school or native location, or that the quiet of the place in which such premises are situated will be disturbed if such licence is granted.
- (4) That the number of previously licensed premises is sufficient for the requirements of the neighbourhood.

48. The Licensing Court ⁽¹⁾ may of its own motion take notice of any matter or thing which in the opinion of the members thereof would be an objection to the granting of a licence, or to the renewal, transfer or removal of a licence, although no objection has been made by any person. Cases in which court may itself raise objections.

In any such case the court shall inform the applicant, and shall adjourn the further consideration of the application, should the applicant so request, for any period not less than four days in order that the person affected by such objection may be afforded an opportunity of replying thereto.

The court shall after any such adjournment give notice in writing, signed by the president, of the cause of objection to the person affected thereby, and of the day on which the adjourned application will be considered.

49. The council or commissioners of any municipality or the Board of Management of any village or community in which the "Villages Management Act, 1881," is in operation, may authorise any person to appear before the Licensing Court for the purpose of objecting on behalf of the inhabitants to the granting or renewal of a licence in such municipality, village or community, as the case may be. Municipalities and Village Boards may object.

RENEWAL OF LICENCES.

50. [Repealed by §5, Act No. 25 of 1891.]

51. [Repealed by §5, Act 25, 1891.]

52. The objections that may be taken to the renewal of any licence may be all or any of the following. Objections to renewals.

- (1) That the applicant is of bad fame and character, or of drunken habits.
- (2) That the licensed premises are out of repair, or are not kept in a clean and wholesome state.

⁽¹⁾ *Dixon v. Kimberley Licensing Court*, 2 High Court, 500; *Kaufmann v. Kimberley Licensing Court*, 2 High Court, 531; *Kemp v. Kimberley Licensing Court*, 2 High Court, 448; *Runchman v. Kimberley Licensing Court*, 4 High Court, 42; *Crosbie v. Kimberley Licensing Court*, 2 High Court, 504.

No. 28, 1883.

- (3) That the business is conducted in an improper manner and drunkenness permitted upon the licensed premises.
- (4) That the conditions upon which the licence was granted have not been satisfactorily fulfilled.
- (5) That a licensed place is no longer required in the neighbourhood.

Notice of objections to be lodged.

53. In case of objections to the renewal ⁽¹⁾ of any licence, the persons objecting shall cause notice of the intention to object and grounds of objection to be given to the applicant at least two days before the sitting of the Licensing Court. If such notice shall not have been given, such court may notwithstanding, if it see fit, adjourn the hearing of the application to a future day, and require the attendance of the holder of the licence on such day, and may then consider the objections and determine thereon.

When licence refused for personal reasons.

54. When the renewal of any licence is refused for some reason personal ⁽²⁾ to the licensed person, the Licensing Court may, if it see fit to do so, adjourn to such day not being less than fourteen nor more than thirty days after such meeting.

Application (not being by the person so refused) for a licence of the same description as that refused in respect of the same premises may be heard and determined at such adjourned meeting.

Three months extension to certain persons to whom renewal refused.

55. In case the renewal of a licence held by any person shall be refused by the Licensing Court, and such person shall not during the preceding twelve months have been convicted of any offence against this or any other Act relating to the sale of intoxicating liquors, he shall, upon payment of a proportionate part of the cost of a licence such as then held by him, be entitled to obtain a licence for a period of three months.

TRANSFER AND REMOVAL OF LICENCES.⁽³⁾

In case of sale, &c., of licensed premises.

56. Any person being the holder of a licence (other than a temporary or club licence) who shall during the currency thereof sell or dispose of his business or the house or premises in respect of which such licence was granted, may make application to the Resident Magistrate for a temporary transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises, as the case may be: and such Magistrate, and any two members of the Licensing Court may, if they think fit, and upon proof of payment by the applicant of the sum prescribed for such transfer, by memorandum endorsed upon the original licence, grant temporary transfer of such licence accordingly.

Licensed person removing to other premises.

57. The holder of any licence (except a temporary licence) who may desire to remove his licence from the licensed premises to any other premises in the same district not distant more than one mile, may make application to the Resident Magistrate to authorise such removal: and such Magistrate and any two members of the Licensing Court, if satisfied that to wait for the next meeting of the Licensing Court would subject such holder to serious loss or inconvenience, and if they think fit, may, upon payment of the sum prescribed, authorise such removal after notice of such application shall have been given by

⁽¹⁾ *Dixon v. Kimberley Licensing Court*, 2 High Court, 500; *Crosbie v. Kimberley Licensing Court*, 2 High Court, 502.

⁽²⁾ *Runchman v. Kimberley Licensing Court*, 4 High Court, 42.

⁽³⁾ See Act 44, 1885, §§ 8 and 9, and Act 25, 1891, § 13.

advertisement in a newspaper circulating in the district for not less than fourteen days, and in such other manner as may by the said Magistrate and members be directed; provided that in case objections be made to the removal of the licence to the premises proposed by any person who would be entitled to object to the granting of a licence for such premises, such removal shall not be authorised as aforesaid.

No. 28, 1893.

58. Any person to whom a licence may be temporarily transferred and any person who may be authorised to remove his licence to other premises shall at the next licensing meeting apply for a licence in the same manner as if he were not a licensed person: Provided that if any such application shall be made at the September meeting of the court, and be allowed by such court, an endorsement thereof shall be made upon the existing licence, which shall, subject to such endorsement, be of force during the unexpired term thereof.

Transferees to
apply for licence
at next Court.

59. Any objections which may be taken to the granting or renewal of a licence may in like manner be taken to the transfer or removal of a licence.

Objections to
transfer, &c.

60. In case the temporary transfer of a licence, or the removal of a licence as aforesaid shall not be ratified by the action of the Licensing Court at the next meeting upon consideration of the application then made in respect thereof, such licence shall, as to the person to whom the same was originally granted, or in respect of the premises originally licensed, as the case may be, remain unimpaired.

When transfer
or renewal re-
fused.

61. Any person to whom a licence may be temporarily transferred, or who may be carrying on or conducting the business of licensed premises as the widow, or curator bonis, or executor of the estate of any deceased person, or as trustee of the estate of any insolvent, or as approved agent of any such widow, curator, executor, or trustee, shall, until the end of the period for which the licence was granted, possess all the rights and be subject and liable to all the duties, obligations and penalties of the original holder of the licence.

Holders of
temporary
licence in same
position as per-
son represented
by them.

62. In case of the death of the holder of any licence, the widow (if any) or the executor of the deceased person, and failing the appointment of an executor, any curator bonis appointed by the Master of the Supreme Court for taking charge of the estate of such deceased person, or any person approved of by the Resident Magistrate, and in case of insolvency, the trustee of the estate of such insolvent, may carry on the business until the next meeting of the Licensing Court, either personally or by an agent approved of by any writing under the hand of the Resident Magistrate, without any formal transfer of the licence.

Curators,
Executors,
Trustees, &c.

63. In case of the marriage of any woman who shall have obtained any licence, such licence shall confer on her husband the same privileges, and shall impose upon him the same duties, obligations and liabilities as if such licence had been granted to him originally.

Rights of
woman marry-
ing to pass to
her husband.

DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.

64. Every holder of a licence under this Act shall produce such licence within a reasonable time after production thereof is demanded by any Resident Magistrate, Justice of the Peace, Excise Officer, Chief Constable, or member of any police force.

Production of
licence.

65. Every licensed person, except the holder of a temporary licence or club licence, shall cause to be painted and fixed, and shall keep painted and fixed on the front of the premises in respect of which his

Licensed per-
sons to have
name, &c.,
painted in front
of his premises.

- No. 28, 1888.** licence is granted, in a conspicuous place, and in letters two inches at least in length, his name, with the addition of the word "licensed," and of words sufficient to express the business for which the licence has been granted. No person who is not licensed shall have any words or letters on his premises importing that he is licensed, and no licensed person that he is licensed in any way other than that in which he is duly licensed.
- Lamp may be ordered to be kept.** 66. The Licensing Court may, if it shall see fit, require the holder of any retail licence in any city, town or village to keep a lamp affixed over the door of the licensed premises, or within twenty feet thereof, and lighted during such hours as such court shall determine.
- Penalty for not providing stipulated accommodation for travellers.** 67. The holder of every retail licence which shall have been granted on the condition of providing accommodation to travellers, who shall fail or refuse, except for some sufficient reason to be judged of by the Resident Magistrate, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable, on conviction, to a penalty not exceeding ten pounds.
- Price of liquor consumed on premises cannot be sued for.** 68. No person shall recover any sum of money or maintain any suit at law on account of any liquor sold by him on credit to any person for consumption on the premises, except in the case of liquor supplied in moderate quantities with meals to any person actually lodging with such first-mentioned person.
- Pledges forbidden.** 69. No person shall receive in payment, or as a pledge or security for any liquor or entertainment supplied in and from his licensed premises, anything except current money, cheques on bankers, or orders for payment of money.
- Penalty.** The person to whom anything pledged in contravention of this section shall belong shall have the same remedy for recovering any such thing, or the value thereof, as if it had not been pledged.
- No payment in advance.** No person shall receive payment in advance for any liquor to be supplied: Any payment so made in advance may be recovered, notwithstanding that any liquor may have been supplied subsequently to such payment.
- Duties of Police.** 70. It shall be the duty of the Chief Constable or Chief Officer of the Police to report to the Licensing Court any licensed premises which are out of repair, or have not reasonable accommodation, or proper or sufficient sanitary or drainage requirements, and any case in which the holder of a licence shall be of drunken habits, or shall keep a disorderly house.
- Right of entry.** 71. Any Chief Constable or Officer of Police, or any constable or policeman authorised in writing by the Resident Magistrate, Chief Constable, or Police Officer, may, during the hours for which the premises are licensed, enter on any such premises, and inspect and examine every room and part of such premises, for the purpose of reporting, as in the last preceding section is required, as to the state and condition of the premises.
- Returns to be laid before Licensing Court.** 72. At every meeting of the Licensing Court, a return shall be laid before such court by the clerk to the Resident Magistrate of the district showing:
- (1) The name of every applicant for a licence, and of every licensed person who shall, since the previous annual meeting of the court, have been convicted of any crime or offence, the nature of such crime or offence, and the penalty or punishment imposed.

- (2) In case of a previous conviction within three years, the particulars of such previous conviction. No. 28, 1882.

OFFENCES.

73. The holder of any licence who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding ten pounds; that is to say, if he shall Offences by licensed persons.

- (1) Permit drunkenness, or any violent, riotous or quarrelsome conduct to take place upon his premises.
- (2) Sell liquor to any person already in a state of intoxication or by any means encourage or incite any person to drink liquor.
- (3) Knowingly harbour or suffer to remain on his premises any constable or policeman during any time appointed for such constable to be upon duty unless for the purpose of keeping or restoring order, or in the execution of his duty.
- (4) Suffer any unlawful game or gambling to be carried on on his premises.
- (5) Permit his premises to be a brothel, or the habitual resort or place of meeting of reputed prostitutes.
- (6) Sell or knowingly permit to be sold to any person apparently under the age of fifteen years, any description of liquor⁽¹⁾ or permit or suffer any such person to drink any such liquor⁽¹⁾ upon his premises.
- (7) ⁽²⁾ Keep his licensed premises open for the sale of liquor, or sell or expose any liquor for sale during any time when he is not authorised by the licence to sell, or allow any liquors purchased before the hour of closing to be consumed on such premises.

And in the case of a second or subsequent conviction every such holder shall be liable to a penalty not exceeding forty pounds.

74. Every person who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding twenty pounds: that is to say, if he shall Offences generally.

- (1) Wilfully mix or cause to be mixed with any liquors any injurious, poisonous, or deleterious ingredient or material to adulterate the same for sale.
- (2) Sell, or keep or offer for sale any liquor with which any ingredient or material injurious to the health of persons drinking such liquor has been mixed.

75. Any person who shall contrary to the provisions of this Act ⁽³⁾ sell, deal in or dispose of intoxicating liquors without a licence, or sell or offer, or expose for sale any such liquors at any place where he is not authorised by his licence to sell the same, shall upon conviction be liable to the following penalties, that is to say: Penalties for dealing without licence.

For the first offence a penalty not exceeding twenty-five pounds,

⁽¹⁾ Printed as amended by § 19, Act 25, 1891.

⁽²⁾ *R. v. Dam*, 3 Juta 63, *Magistrate's Cases*, 4 Juta, 123; *R. v. Transfeldt*, 5 Juta, 181; *R. v. Brooks*, 6 Juta, 319; *R. v. Hawkins*, 7 Juta, 69; *R. v. Le Cornu*, 4 High Court, 406.

⁽³⁾ *R. v. Keviet*, 2 High Court, 232; *R. v. Thesen*, 6 Juta, 68; *R. v. Willem*, 4 High Court, 242; *R. v. Fullerton*, 4 High Court, 245; *R. v. Fulton*, 4 E.D.C., 235.

No. 28, 1883.

and in default of payment being made or security given for the same, to imprisonment with or without hard labour for any period not exceeding three months unless such penalty be sooner paid or levied.

For a second offence a penalty not exceeding fifty pounds, and in default of payment of security as aforesaid being made or given to imprisonment with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid or levied.

For a third or any subsequent offence a penalty not exceeding one hundred pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding twelve months, unless such penalty be sooner paid or levied; or to both such penalty and such imprisonment.

In addition to any other penalty imposed by this section, the convicting Magistrate or Special Justice of the Peace, as the case may be, may in case of a second or subsequent conviction of any person for any offence in this section mentioned, within three years previously adjudge that such person shall, if he be the holder of a licence under this Act, or the holder of a retail shop licence, forfeit such licence, or both such licences if both be held by such person, and that the offender be disqualified from taking out any other retail shop licence during the remainder of the then current year, and also from holding any licence for the sale of intoxicating liquors for any term of years or at any time.

Cases when
licence becomes
forfeited.

76. The holder of any retail licence or bottle licence shall be liable to forfeit such licence⁽¹⁾

- (1) If he shall permit any other person to manage, superintend, or conduct the business of the licensed premises during his absence for a longer period than one month without the consent, in writing, of the Resident Magistrate.
- (2) If he shall, whether present in such premises or not permit any unlicensed person to be in effect the owner of the business of the licensed premises, unless with the consent of the Licensing Court.
- (3) If (being the keeper of any inn or hotel) he shall fail to provide and maintain the accommodation required according to the conditions prescribed by the Licensing Court granting such licence.
- (4) If (except in the case of fire, tempest, or other cause beyond his control) he shall allow the licensed premises to become ruinous or dilapidated,
- (5) If he shall permit his premises to be a brothel, or if he shall sell liquor to any person already in a state of intoxication.
- (6) If he shall be twice convicted of selling, offering or keeping for sale any adulterated liquor.
- (7) (*) If he shall be convicted of any offence under this Act, and a previous conviction within the preceding six months of the same or any other offence under this Act shall be proved.

⁽¹⁾ See also § 11, Act 44, 1885.

^(*) *Hagemeyer v. Kimberley Licensing Court*, 4 High Court, 26.

- (8) If he shall be convicted of any crime and sentenced to No. 23, 1893. imprisonment without the option of a fine.

77. In any proceeding relative to any offence under this Act it shall not be necessary to show that any money actually passed or that any liquor was actually consumed, ⁽¹⁾ if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of liquor was about to take place; and proof of consumption, or intended consumption of liquor, on licensed premises by some person other than the occupier, or a servant in such premises, shall be evidence that such liquor was sold to the person consuming or about to consume the same by or on behalf of the holder of such licence. What need not be proved in prosecutions.

If any vendor of ginger or other beer, soda water, lemonade, or the like drinks, not being duly licensed, shall supply liquors to mix or be taken with such drink, he shall be deemed to have sold such liquor.

78. Any licensed person may refuse to admit to or may turn out of the premises in respect of which his licence is granted any person who is drunk, or who is violent, quarrelsome or disorderly, whether drunk or not, and any person whose presence on his premises would subject him to a penalty under this Act, and may refuse to serve any such person with liquor. Any such person, who upon being requested by such licensed person, or his agent or servant, or any constable or policeman, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding five pounds; and all constables or policemen are required on the demand of such licensed person, agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be reasonably necessary for that purpose. Who may be refused admission to licensed premises.

79. [Repealed by § 22, Act No. 25, 1891.]

80. [Repealed by § 22, Act No. 25, 1891.]

81. Where any riot or tumult occurs or is expected to occur in any place, the Resident Magistrate, or any two Justices of the Peace, may order any or every licensed person in or near such place to close his premises during any time which such Magistrate or Justices may see fit. Closing during riot, &c.

82. Any person acting by order of any Resident Magistrate or two Justices of the Peace may use such force as may be necessary for closing such premises: Any person resisting or obstructing the execution of any such order, and any licensed person selling liquor in contravention of such order, shall upon conviction be liable to a penalty not exceeding fifty pounds. Force may be used.

83. Any constable or member of a police force may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Act, and if such person shall fail upon such demand to give his name or address, or shall give a name or address which the constable, or other person demanding the same, has reasonable grounds to believe is false, he may apprehend such person without warrant, and take him as soon as possible before a Resident Magistrate or Justice of the Peace. Any such person who fails to give his name and address Persons found on premises when seizure made, to give name and addresses. Penalty.

(1) R. v. Le Cornu, 4 High Court, 406; R. v. Fullerton, 4 High Court, 245.

No. 23, 1922.

Evidence of
being un-
licensed.

when so demanded, or gives a false name or address, shall, upon conviction, be liable to a penalty not exceeding five pounds.

84. In any proceeding against any person for selling, or allowing to be sold, any liquors without a licence, such person shall be deemed to be unlicensed unless he shall produce his licence or give other satisfactory proof of his being licensed. The fact of any person not holding a licence having any sign or notice importing that he is licensed upon or near his premises, or having a house or premises fitted up with a bar or other place containing bottles, casks, or vessels, so displayed as to induce a reasonable belief that liquor is sold or served therein, or of there being on such premises liquor concealed, ⁽¹⁾ or more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

Penalties for
contravention of
Act.

85. Any person convicted of contravening any of the provisions of this Act for or in respect of which no penalty is specially provided shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

To imprisonment with or without hard labour not exceeding one month if the penalty do not exceed five pounds; or

To imprisonment with or without hard labour not exceeding three months if the penalty exceed five pounds;

Unless such penalty be sooner paid.

JURISDICTION OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE.

Magistrates to
have juris-
diction.

86. All offences against this Act shall be cognisable before the Resident Magistrate, or any Special Justice of the Peace within whose jurisdiction such offences shall have been committed, and any such Resident Magistrate or Special Justice of the Peace may impose the penalties respectively by this Act provided.

Warrants to
search.

87. Any Justice of the Peace, ⁽²⁾ if satisfied by information on oath that there is reasonable ground to believe that liquor has been or is being sold or kept for sale at any place, whether a building or not, in which or where such liquor is not authorised to be sold, or in any vehicle, may grant a warrant under his hand by virtue whereof it shall be lawful for any constable or member of a police force at any hour within a time to be stated in such warrant, or if no time be stated, within fourteen days from the date thereof, to enter, and if need be by force, the place or vehicle named in the warrant, and every part thereof, and search for liquor therein, and to seize and remove any liquor found therein which there is reasonable ground to believe or suppose is in such place or vehicle for the purpose of unlawful sale, and the vessels containing such liquor.

Forfeiture of
seized liquors.

88. In the event of any person being convicted of selling or keeping for sale any liquor which he is not authorised to sell, any liquor seized under the authority of this Act and the vessels containing such liquor shall be forfeited and sold and the proceeds thereof paid into the Public Treasury.

⁽¹⁾ R. v. Fullerton, 4 High Court, 245.

⁽²⁾ Van Wyk v. Viljoen, 4 Juta, 76.

89. The Resident Magistrate of any district may by an order in writing, forbid the selling of liquor to any person who

No. 28, 1899.

Shall within the space of three months have been thrice convicted of drunkenness, or, who having been twice so convicted shall also have been convicted of assault;—or

Power to forbid selling by licensed persons.

By excessive drinking of liquor misspends, wastes or lessens his estate, or greatly impairs his health, or endangers the peace of his family.

Every such order shall be in force during such time as the said Magistrate may determine, not however exceeding twelve months, in the district wherein the same was granted and in any other district into which such person may remove or be. Every licensed person who shall with a knowledge of such prohibition sell to any such person any liquor, and every other person who with such knowledge shall give to, purchase or procure for such prohibited person any liquor shall on conviction be liable to a penalty not exceeding five pounds, in respect of each offence.

MISCELLANEOUS PROVISIONS.

90. For the purposes of this Act Cape Town and the district thereof and the Cape district shall be deemed and taken to be one district.

Cape Town and district and Cape District one district.

91. Any licensed person being the keeper of any inn or hotel, to whom any person shall be indebted for board or lodging, or for the keep or expenses of any horse or other animal left with or standing at livery in the stables of such licensed person, shall be entitled to cause to be sold any property which may have been deposited with him or left in the house he keeps, or on the premises belonging thereto, subject to the following provisions and conditions:—

Proceedings of landlords in regard to persons who have left without paying.

- (1) No such property shall be sold unless the same shall have been for the space of one month in the charge or possession of such licensed person without such debt being paid or satisfied.
- (2) If the address of the debtor shall be known to such licensed person, notice in writing shall be given or sent by post prepaid, informing him that unless within ten days from the date of such notice the debt be paid or satisfied, the property in question will be sold.
- (3) If the address of the debtor shall not be known, notice shall be given by advertisement in some newspaper circulating in the district at least once a week during three weeks of the intended sale.
- (4) If after the expiration of the period stated in any such notices respectively, the debt shall not be paid, the person having custody of any such property may require the messenger of the Court of the Resident Magistrate of the district to sell such property by auction.
- (5) The messenger if so required shall make an inventory of such property, and deal therewith precisely as if such property had been property attached by legal process. Such messenger shall lodge with the Clerk of the Court of the Resident Magistrate all documents and accounts which in the case of the execution of a writ he would be required to lodge, or such as the Resident Magistrate may order or require.

No. 28, 1883.

(6) The messenger after payment out of the proceeds of any sale of the fees and charges due to him in respect of such sale, according to the scale allowed in civil process, and upon taxation thereof by the Clerk of the Court, shall pay to the licensed person the amount due to him, including the cost of postage on, or of advertising any such notice, as aforesaid, and if there be any surplus such surplus shall be paid to the debtor.

When such person's property may be sold.

92. Any property which may have been left in charge of any such licensed person, and not reclaimed within six months, may, after notice such as is in last preceding section has been given, be sold by the messenger provided in the manner aforesaid.

Who may prosecute under the Act.

93. Any person may prosecute any offender for contravening the provisions of this Act: and in any summons or information it shall be sufficient to set forth the offence charged in the words of this Act or in similar words without inserting or negating any exception, exemption, or qualification, but any such exception, exemption, or qualification may be proved by the defendant.

Half fine may go to prosecutor.

94. The court before which any offence against this Act shall be prosecuted may direct that any portion not exceeding one-half of any penalty imposed and recovered, shall be paid or awarded to any person who may have given such information as shall have led to the conviction of the offender; and when any prosecution shall have been conducted by any Field-cornet one-half of the penalty imposed and recovered shall be awarded to such Field-cornet as remuneration for his trouble in conducting such prosecution.

Levying for penalties.

95. For the purposes of levying any penalty imposed under the provisions of this Act execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed, whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the *bond fide* property of lodgers or travellers or of persons who may leave or deposit such goods for safe custody, or convenience, or for the purpose of being worked by any handicraftsman.

Errors which may be rectified by Governor.

96. If through any accident or omission anything required by this Act to be done is omitted to be done, or is not done within the time fixed, the Governor may order all such steps to be taken as may be necessary to rectify any error or omission, and may validate anything which may have been irregularly done in matter of form, so that the intent and purpose of this Act may have effect. The Governor may also authorise the holding of a special meeting of any Licensing Court in the event of any emergency requiring that a special meeting should be held.

Governor may frame regulations for Licensing Court.

97. The Governor may from time to time make, alter, and revoke regulations, not being contrary to the provisions of this Act, for regulating the proceedings and meetings of Licensing Courts, prescribing the forms of licences, notices, and other documents to be used, and generally for the more efficient administration of this Act.

When Act to come into force. Short Title.

98. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-four, and may be cited as the "Liquor Licensing Act, 1883."

THE FIRST SCHEDULE.
Enactments Repealed.

No. 23, 1883.

Number and Year.	TITLE.	Extent of Repeal.
No. 6, 1884.	Ordinance for regulating Sales by Auction.	The Eleventh Section.
No. 9, 1851.	Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors.	
No. 10, 1860.	An Act to make better provision for the granting and withholding of Licences to Sell Wines and Spirituous and other Liquors.	
No. 2, 1868.	The Retail Wines and Spirits Act, 1868.	
No. 8, 1875.	The "Wines and Spirits Act, 1875."	The whole.
No. 11 of 1876.	An Act to Amend the Law relating to the Sale of Wines and certain other Liquors by Auctioneers.	
	GRIGUALAND WEST.	
No. 16 of 1879.	Ordinance for consolidating and amending the Laws relating to the Sale of Intoxicating Liquors.	
No. 19 of 1880.	"Liquor Law of 1879 Amendment Ordinance, 1880."	

THE SECOND SCHEDULE.

Sums payable for or in respect of Licences granted or renewed, and privileges allowed under the "Liquor Licensing Act, 1883."

1. For a Wholesale Licence. (1) Thirty pounds.
2. For a Retail Licence at any Railway Restaurant, to endure for one year from date of issue thereof Thirty pounds.

(1) Printed as amended by Act 38, 1887.

No. 28, 1883.

- (3) That the business is conducted in an improper manner and drunkenness permitted upon the licensed premises.
- (4) That the conditions upon which the licence was granted have not been satisfactorily fulfilled.
- (5) That a licensed place is no longer required in the neighbourhood.

Notice of objections to be lodged.

53. In case of objections to the renewal ⁽¹⁾ of any licence, the persons objecting shall cause notice of the intention to object and grounds of objection to be given to the applicant at least two days before the sitting of the Licensing Court. If such notice shall not have been given, such court may notwithstanding, if it see fit, adjourn the hearing of the application to a future day, and require the attendance of the holder of the licence on such day, and may then consider the objections and determine thereon.

When licence refused for personal reasons.

54. When the renewal of any licence is refused for some reason personal ⁽²⁾ to the licensed person, the Licensing Court may, if it see fit to do so, adjourn to such day not being less than fourteen nor more than thirty days after such meeting.

Application (not being by the person so refused) for a licence of the same description as that refused in respect of the same premises may be heard and determined at such adjourned meeting.

Three months extension to certain persons to whom renewal refused.

55. In case the renewal of a licence held by any person shall be refused by the Licensing Court, and such person shall not during the preceding twelve months have been convicted of any offence against this or any other Act relating to the sale of intoxicating liquors, he shall, upon payment of a proportionate part of the cost of a licence such as then held by him, be entitled to obtain a licence for a period of three months.

TRANSFER AND REMOVAL OF LICENCES.⁽³⁾

In case of sale, &c., of licensed premises.

56. Any person being the holder of a licence (other than a temporary or club licence) who shall during the currency thereof sell or dispose of his business or the house or premises in respect of which such licence was granted, may make application to the Resident Magistrate for a temporary transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises, as the case may be: and such Magistrate, and any two members of the Licensing Court may, if they think fit, and upon proof of payment by the applicant of the sum prescribed for such transfer, by memorandum endorsed upon the original licence, grant temporary transfer of such licence accordingly.

Licensed person removing to other premises.

57. The holder of any licence (except a temporary licence) who may desire to remove his licence from the licensed premises to any other premises in the same district not distant more than one mile, may make application to the Resident Magistrate to authorise such removal: and such Magistrate and any two members of the Licensing Court, if satisfied that to wait for the next meeting of the Licensing Court would subject such holder to serious loss or inconvenience, and if they think fit, may, upon payment of the sum prescribed, authorise such removal after notice of such application shall have been given by

⁽¹⁾ *Dixon v. Kimberley Licensing Court*, 2 High Court, 500; *Crosbie v. Kimberley Licensing Court*, 2 High Court, 502.

⁽²⁾ *Runchman v. Kimberley Licensing Court*, 4 High Court, 42.

⁽³⁾ See Act 44, 1885, §§ 8 and 9, and Act 25, 1891, § 13.

No. 23, 1893.

advertisement in a newspaper circulating in the district for not less than fourteen days, and in such other manner as may by the said Magistrate and members be directed; provided that in case objections be made to the removal of the licence to the premises proposed by any person who would be entitled to object to the granting of a licence for such premises, such removal shall not be authorised as aforesaid.

58. Any person to whom a licence may be temporarily transferred and any person who may be authorised to remove his licence to other premises shall at the next licensing meeting apply for a licence in the same manner as if he were not a licensed person: Provided that if any such application shall be made at the September meeting of the court, and be allowed by such court, an endorsement thereof shall be made upon the existing licence, which shall, subject to such endorsement, be of force during the unexpired term thereof.

Transferees to apply for licence at next Court.

59. Any objections which may be taken to the granting or renewal of a licence may in like manner be taken to the transfer or removal of a licence.

Objections to transfer, &c.

60. In case the temporary transfer of a licence, or the removal of a licence as aforesaid shall not be ratified by the action of the Licensing Court at the next meeting upon consideration of the application then made in respect thereof, such licence shall, as to the person to whom the same was originally granted, or in respect of the premises originally licensed, as the case may be, remain unimpaired.

When transfer or renewal refused.

61. Any person to whom a licence may be temporarily transferred, or who may be carrying on or conducting the business of licensed premises as the widow, or curator bonis, or executor of the estate of any deceased person, or as trustee of the estate of any insolvent, or as approved agent of any such widow, curator, executor, or trustee, shall, until the end of the period for which the licence was granted, possess all the rights and be subject and liable to all the duties, obligations and penalties of the original holder of the licence.

Holders of temporary licence in same position as person represented by them.

62. In case of the death of the holder of any licence, the widow (if any) or the executor of the deceased person, and failing the appointment of an executor, any curator bonis appointed by the Master of the Supreme Court for taking charge of the estate of such deceased person, or any person approved of by the Resident Magistrate, and in case of insolvency, the trustee of the estate of such insolvent, may carry on the business until the next meeting of the Licensing Court, either personally or by an agent approved of by any writing under the hand of the Resident Magistrate, without any formal transfer of the licence.

Curators, Executors, Trustees, &c.

63. In case of the marriage of any woman who shall have obtained any licence, such licence shall confer on her husband the same privileges, and shall impose upon him the same duties, obligations and liabilities as if such licence had been granted to him originally.

Rights of woman marrying to pass to her husband.

DUTIES AND LIABILITIES OF LICENSED PERSONS AND OTHERS.

64. Every holder of a licence under this Act shall produce such licence within a reasonable time after production thereof is demanded by any Resident Magistrate, Justice of the Peace, Excise Officer, Chief Constable, or member of any police force.

Production of licence.

65. Every licensed person, except the holder of a temporary licence or club licence, shall cause to be painted and fixed, and shall keep painted and fixed on the front of the premises in respect of which his

Licensed persons to have name, &c., painted in front of his premises.

- No. 28, 1883.** licence is granted, in a conspicuous place, and in letters two inches at least in length, his name, with the addition of the word "licensed," and of words sufficient to express the business for which the licence has been granted. No person who is not licensed shall have any words or letters on his premises importing that he is licensed, and no licensed person that he is licensed in any way other than that in which he is duly licensed.
- Lamp may be ordered to be kept.** 66. The Licensing Court may, if it shall see fit, require the holder of any retail licence in any city, town or village to keep a lamp affixed over the door of the licensed premises, or within twenty feet thereof, and lighted during such hours as such court shall determine.
- Penalty for not providing stipulated accommodation for travellers.** 67. The holder of every retail licence which shall have been granted on the condition of providing accommodation to travellers, who shall fail or refuse, except for some sufficient reason to be judged of by the Resident Magistrate, to supply lodging, meals or accommodation to travellers, shall, for each offence, be liable, on conviction, to a penalty not exceeding ten pounds.
- Price of liquor consumed on premises cannot be sued for.** 68. No person shall recover any sum of money or maintain any suit at law on account of any liquor sold by him on credit to any person for consumption on the premises, except in the case of liquor supplied in moderate quantities with meals to any person actually lodging with such first-mentioned person.
- Pledges forbidden.** 69. No person shall receive in payment, or as a pledge or security for any liquor or entertainment supplied in and from his licensed premises, anything except current money, cheques on bankers, or orders for payment of money.
- Penalty.** The person to whom anything pledged in contravention of this section shall belong shall have the same remedy for recovering any such thing, or the value thereof, as if it had not been pledged.
- No payment in advance.** No person shall receive payment in advance for any liquor to be supplied: Any payment so made in advance may be recovered, notwithstanding that any liquor may have been supplied subsequently to such payment.
- Duties of Police.** 70. It shall be the duty of the Chief Constable or Chief Officer of the Police to report to the Licensing Court any licensed premises which are out of repair, or have not reasonable accommodation, or proper or sufficient sanitary or drainage requirements, and any case in which the holder of a licence shall be of drunken habits, or shall keep a disorderly house.
- Right of entry.** 71. Any Chief Constable or Officer of Police, or any constable or policeman authorised in writing by the Resident Magistrate, Chief Constable, or Police Officer, may, during the hours for which the premises are licensed, enter on any such premises, and inspect and examine every room and part of such premises, for the purpose of reporting, as in the last preceding section is required, as to the state and condition of the premises.
- Returns to be laid before Licensing Court.** 72. At every meeting of the Licensing Court, a return shall be laid before such court by the clerk to the Resident Magistrate of the district showing:
- (1) The name of every applicant for a licence, and of every licensed person who shall, since the previous annual meeting of the court, have been convicted of any crime or offence, the nature of such crime or offence, and the penalty or punishment imposed.

- (2) In case of a previous conviction within three years, the particulars of such previous conviction. No. 28, 1883.

OFFENCES.

73. The holder of any licence who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding ten pounds; that is to say, if he shall

Offences by
licensed persons.

- (1) Permit drunkenness, or any violent, riotous or quarrelsome conduct to take place upon his premises.
- (2) Sell liquor to any person already in a state of intoxication or by any means encourage or incite any person to drink liquor.
- (3) Knowingly harbour or suffer to remain on his premises any constable or policeman during any time appointed for such constable to be upon duty unless for the purpose of keeping or restoring order, or in the execution of his duty.
- (4) Suffer any unlawful game or gambling to be carried on on his premises.
- (5) Permit his premises to be a brothel, or the habitual resort or place of meeting of reputed prostitutes.
- (6) Sell or knowingly permit to be sold to any person apparently under the age of fifteen years, any description of liquor⁽¹⁾ or permit or suffer any such person to drink any such liquor⁽¹⁾ upon his premises.
- (7) ⁽²⁾ Keep his licensed premises open for the sale of liquor, or sell or expose any liquor for sale during any time when he is not authorised by the licence to sell, or allow any liquors purchased before the hour of closing to be consumed on such premises.

And in the case of a second or subsequent conviction every such holder shall be liable to a penalty not exceeding forty pounds.

74. Every person who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding twenty pounds: that is to say, if he shall

Offences gene-
rally.

- (1) Wilfully mix or cause to be mixed with any liquors any injurious, poisonous, or deleterious ingredient or material to adulterate the same for sale.
- (2) Sell, or keep or offer for sale any liquor with which any ingredient or material injurious to the health of persons drinking such liquor has been mixed.

75. Any person who shall contrary to the provisions of this Act ⁽³⁾ sell, deal in or dispose of intoxicating liquors without a licence, or sell or offer, or expose for sale any such liquors at any place where he is not authorised by his licence to sell the same, shall upon conviction be liable to the following penalties, that is to say:

Penalties for
dealing without
licence.

For the first offence a penalty not exceeding twenty-five pounds,

⁽¹⁾ Printed as amended by § 19, Act 25, 1891.

⁽²⁾ *R. v. Dam*, 3 *Juta* 63, *Magistrate's Cases*, 4 *Juta*, 123; *R. v. Transfeldt*, 5 *Juta*, 181; *R. v. Brooks*, 6 *Juta*, 319; *R. v. Hawkins*, 7 *Juta*, 69; *R. v. Le Cornu*, 4 *High Court*, 406.

⁽³⁾ *R. v. Keviet*, 2 *High Court*, 232; *R. v. Thesen*, 6 *Juta*, 68; *R. v. Willem*, 4 *High Court*, 242; *R. v. Fullerton*, 4 *High Court*, 245; *R. v. Fulton*, 4 *E.D.C.*, 235.

No. 28, 1883.

and in default of payment being made or security given for the same, to imprisonment with or without hard labour for any period not exceeding three months unless such penalty be sooner paid or levied.

For a second offence a penalty not exceeding fifty pounds, and in default of payment of security as aforesaid being made or given to imprisonment with or without hard labour for any period not exceeding six months, unless such penalty be sooner paid or levied.

For a third or any subsequent offence a penalty not exceeding one hundred pounds, and in default of payment or security as aforesaid being made or given, to imprisonment with or without hard labour for any period not exceeding twelve months, unless such penalty be sooner paid or levied; or to both such penalty and such imprisonment.

In addition to any other penalty imposed by this section, the convicting Magistrate or Special Justice of the Peace, as the case may be, may in case of a second or subsequent conviction of any person for any offence in this section mentioned, within three years previously adjudge that such person shall, if he be the holder of a licence under this Act, or the holder of a retail shop licence, forfeit such licence, or both such licences if both be held by such person, and that the offender be disqualified from taking out any other retail shop licence during the remainder of the then current year, and also from holding any licence for the sale of intoxicating liquors for any term of years or at any time.

Cases when
licence becomes
forfeited.

76. The holder of any retail licence or bottle licence shall be liable to forfeit such licence⁽¹⁾

- (1) If he shall permit any other person to manage, superintend, or conduct the business of the licensed premises during his absence for a longer period than one month without the consent, in writing, of the Resident Magistrate.
- (2) If he shall, whether present in such premises or not permit any unlicensed person to be in effect the owner of the business of the licensed premises, unless with the consent of the Licensing Court.
- (3) If (being the keeper of any inn or hotel) he shall fail to provide and maintain the accommodation required according to the conditions prescribed by the Licensing Court granting such licence.
- (4) If (except in the case of fire, tempest, or other cause beyond his control) he shall allow the licensed premises to become ruinous or dilapidated,
- (5) If he shall permit his premises to be a brothel, or if he shall sell liquor to any person already in a state of intoxication.
- (6) If he shall be twice convicted of selling, offering or keeping for sale any adulterated liquor.
- (7) (*) If he shall be convicted of any offence under this Act, and a previous conviction within the preceding six months of the same or any other offence under this Act shall be proved.

⁽¹⁾ See also § 11, Act 44, 1885.

^(*) *Hagemeyer v. Kimberley Licensing Court*, 4 High Court, 26.

- (8) If he shall be convicted of any crime and sentenced to No. 25, 1893. imprisonment without the option of a fine.

77. In any proceeding relative to any offence under this Act it shall not be necessary to show that any money actually passed or that any liquor was actually consumed, ^{What need not be proved in prosecutions.} (1) if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of liquor was about to take place; and proof of consumption, or intended consumption of liquor, on licensed premises by some person other than the occupier, or a servant in such premises, shall be evidence that such liquor was sold to the person consuming or about to consume the same by or on behalf of the holder of such licence.

If any vendor of ginger or other beer, soda water, lemonade, or the like drinks, not being duly licensed, shall supply liquors to mix or be taken with such drink, he shall be deemed to have sold such liquor.

78. Any licensed person may refuse to admit to or may turn out of the premises in respect of which his licence is granted any person who is drunk, or who is violent, quarrelsome or disorderly, whether drunk or not, and any person whose presence on his premises would subject him to a penalty under this Act, and may refuse to serve any such person with liquor. Any such person, who upon being requested by such licensed person, or his agent or servant, or any constable or policeman, to quit such premises, refuses or fails to do so, shall be liable to a penalty not exceeding five pounds; and all constables or policemen are required on the demand of such licensed person, agent or servant, to expel or assist in expelling every such person from such premises, and may use such force as may be reasonably necessary for that purpose. ^{Who may be refused admission to licensed premises.}

79. [Repealed by § 22, Act No. 25, 1891.]

80. [Repealed by § 22, Act No. 25, 1891.]

81. Where any riot or tumult occurs or is expected to occur in any place, the Resident Magistrate, or any two Justices of the Peace, may order any or every licensed person in or near such place to close his premises during any time which such Magistrate or Justices may see fit. ^{Closing during riot, &c.}

82. Any person acting by order of any Resident Magistrate or two Justices of the Peace may use such force as may be necessary for closing such premises: Any person resisting or obstructing the execution of any such order, and any licensed person selling liquor in contravention of such order, shall upon conviction be liable to a penalty not exceeding fifty pounds. ^{Force may be used.}

83. Any constable or member of a police force may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Act, and if such person shall fail upon such demand to give his name or address, or shall give a name or address which the constable, or other person demanding the same, has reasonable grounds to believe is false, he may apprehend such person without warrant, and take him as soon as possible before a Resident Magistrate or Justice of the Peace. Any such person who fails to give his name and address ^{Persons found on premises when seizure made, to give name and addresses.} ^{Penalty.}

(1) R. v. Le Cornu, 4 High Court, 406; R. v. Fullerton, 4 High Court, 245.

No. 26, 1922.

Evidence of
being un-
licensed.

when so demanded, or gives a false name or address, shall, upon conviction, be liable to a penalty not exceeding five pounds.

84. In any proceeding against any person for selling, or allowing to be sold, any liquors without a licence, such person shall be deemed to be unlicensed unless he shall produce his licence or give other satisfactory proof of his being licensed. The fact of any person not holding a licence having any sign or notice importing that he is licensed upon or near his premises, or having a house or premises fitted up with a bar or other place containing bottles, casks, or vessels, so displayed as to induce a reasonable belief that liquor is sold or served therein, or of there being on such premises liquor concealed, ⁽¹⁾ or more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

Penalties for
contravention of
Act.

85. Any person convicted of contravening any of the provisions of this Act for or in respect of which no penalty is specially provided shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

To imprisonment with or without hard labour not exceeding one month if the penalty do not exceed five pounds; or

To imprisonment with or without hard labour not exceeding three months if the penalty exceed five pounds;

Unless such penalty be sooner paid.

JURISDICTION OF RESIDENT MAGISTRATES AND JUSTICES OF THE PEACE.

Magistrates to
have juris-
diction.

86. All offences against this Act shall be cognisable before the Resident Magistrate, or any Special Justice of the Peace within whose jurisdiction such offences shall have been committed, and any such Resident Magistrate or Special Justice of the Peace may impose the penalties respectively by this Act provided.

Warrants to
search.

87. Any Justice of the Peace, ⁽²⁾ if satisfied by information on oath that there is reasonable ground to believe that liquor has been or is being sold or kept for sale at any place, whether a building or not, in which or where such liquor is not authorised to be sold, or in any vehicle, may grant a warrant under his hand by virtue whereof it shall be lawful for any constable or member of a police force at any hour within a time to be stated in such warrant, or if no time be stated, within fourteen days from the date thereof, to enter, and if need be by force, the place or vehicle named in the warrant, and every part thereof, and search for liquor therein, and to seize and remove any liquor found therein which there is reasonable ground to believe or suppose is in such place or vehicle for the purpose of unlawful sale, and the vessels containing such liquor.

Forfeiture of
seized liquors.

88. In the event of any person being convicted of selling or keeping for sale any liquor which he is not authorised to sell, any liquor seized under the authority of this Act and the vessels containing such liquor shall be forfeited and sold and the proceeds thereof paid into the Public Treasury.

⁽¹⁾ R. v. Fullerton, 4 High Court, 245.

⁽²⁾ Van Wyk v. Viljoen, 4 Juta, 76.

89. The Resident Magistrate of any district may by an order in writing, forbid the selling of liquor to any person who

No. 23, 1899.

Shall within the space of three months have been thrice convicted of drunkenness, or, who having been twice so convicted shall also have been convicted of assault;—or

Power to forbid selling by licensed persons.

By excessive drinking of liquor misspends, wastes or lessens his estate, or greatly impairs his health, or endangers the peace of his family.

Every such order shall be in force during such time as the said Magistrate may determine, not however exceeding twelve months, in the district wherein the same was granted and in any other district into which such person may remove or be. Every licensed person who shall with a knowledge of such prohibition sell to any such person any liquor, and every other person who with such knowledge shall give to, purchase or procure for such prohibited person any liquor shall on conviction be liable to a penalty not exceeding five pounds, in respect of each offence.

MISCELLANEOUS PROVISIONS.

90. For the purposes of this Act Cape Town and the district thereof and the Cape district shall be deemed and taken to be one district.

Cape Town and district and Cape District one district.

91. Any licensed person being the keeper of any inn or hotel, to whom any person shall be indebted for board or lodging, or for the keep or expenses of any horse or other animal left with or standing at livery in the stables of such licensed person, shall be entitled to cause to be sold any property which may have been deposited with him or left in the house he keeps, or on the premises belonging thereto, subject to the following provisions and conditions:—

Proceedings of landlords in regard to persons who have left without paying.

- (1) No such property shall be sold unless the same shall have been for the space of one month in the charge or possession of such licensed person without such debt being paid or satisfied.
- (2) If the address of the debtor shall be known to such licensed person, notice in writing shall be given or sent by post prepaid, informing him that unless within ten days from the date of such notice the debt be paid or satisfied, the property in question will be sold.
- (3) If the address of the debtor shall not be known, notice shall be given by advertisement in some newspaper circulating in the district at least once a week during three weeks of the intended sale.
- (4) If after the expiration of the period stated in any such notices respectively, the debt shall not be paid, the person having custody of any such property may require the messenger of the Court of the Resident Magistrate of the district to sell such property by auction.
- (5) The messenger if so required shall make an inventory of such property, and deal therewith precisely as if such property had been property attached by legal process. Such messenger shall lodge with the Clerk of the Court of the Resident Magistrate all documents and accounts which in the case of the execution of a writ he would be required to lodge, or such as the Resident Magistrate may order or require.

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(6) The messenger after payment out of the proceeds of any sale of the fees and charges due to him in respect of such sale, according to the scale allowed in civil process, and upon taxation thereof by the Clerk of the Court, shall pay to the licensed person the amount due to him, including the cost of postage on, or of advertising any such notice, as aforesaid, and if there be any surplus such surplus shall be paid to the debtor.

When such person's property may be sold.

92. Any property which may have been left in charge of any such licensed person, and not reclaimed within six months, may, after notice such as is in last preceding section has been given, be sold by the messenger provided in the manner aforesaid.

Who may prosecute under the Act.

93. Any person may prosecute any offender for contravening the provisions of this Act: and in any summons or information it shall be sufficient to set forth the offence charged in the words of this Act or in similar words without inserting or negating any exception, exemption, or qualification, but any such exception, exemption, or qualification may be proved by the defendant.

Half fine may go to prosecutor.

94. The court before which any offence against this Act shall be prosecuted may direct that any portion not exceeding one-half of any penalty imposed and recovered, shall be paid or awarded to any person who may have given such information as shall have led to the conviction of the offender; and when any prosecution shall have been conducted by any Field-cornet one-half of the penalty imposed and recovered shall be awarded to such Field-cornet as remuneration for his trouble in conducting such prosecution.

Levying for penalties.

95. For the purposes of levying any penalty imposed under the provisions of this Act execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed, whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the *bond fide* property of lodgers or travellers or of persons who may leave or deposit such goods for safe custody, or convenience, or for the purpose of being worked by any handicraftsman.

Errors which may be rectified by Governor.

96. If through any accident or omission anything required by this Act to be done is omitted to be done, or is not done within the time fixed, the Governor may order all such steps to be taken as may be necessary to rectify any error or omission, and may validate anything which may have been irregularly done in matter of form, so that the intent and purpose of this Act may have effect. The Governor may also authorise the holding of a special meeting of any Licensing Court in the event of any emergency requiring that a special meeting should be held.

Governor may frame regulations for Licensing Court.

97. The Governor may from time to time make, alter, and revoke regulations, not being contrary to the provisions of this Act, for regulating the proceedings and meetings of Licensing Courts, prescribing the forms of licences, notices, and other documents to be used, and generally for the more efficient administration of this Act.

When Act to come into force. Short Title.

98. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-four, and may be cited as the "Liquor Licensing Act, 1883."

THE FIRST SCHEDULE.
Enactments Repealed.

No. 2^d, 1883.

Number and Year.	TITLE.	Extent of Repeal.
No. 6, 1884.	Ordinance for regulating Sales by Auction.	The Eleventh Section.
No. 9, 1851.	Ordinance for the better regulation of the Sale of Wines and Spirituous and Fermented Liquors.	
No. 10, 1860.	An Act to make better provision for the granting and withholding of Licences to Sell Wines and Spirituous and other Liquors.	
No. 2, 1868.	The Retail Wines and Spirits Act, 1868.	
No. 8, 1875.	The "Wines and Spirits Act, 1875."	The whole.
No. 11 of 1876.	An Act to Amend the Law relating to the Sale of Wines and certain other Liquors by Auctioneers.	
	GRIQUALAND WEST.	
No. 16 of 1879.	Ordinance for consolidating and amending the Laws relating to the Sale of Intoxicating Liquors.	
No. 19 of 1880.	"Liquor Law of 1879 Amendment Ordinance, 1880."	

THE SECOND SCHEDULE.

Sums payable for or in respect of Licences granted or renewed, and privileges allowed under the "Liquor Licensing Act, 1883."

1. For a Wholesale Licence. (1) Thirty pounds.
2. For a Retail Licence at any Railway Restaurant, to endure for one year from date of issue thereof Thirty pounds.

(1) Printed as amended by Act 38, 1887.

No. 28, 1883.

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|--|------------------|
| 3. For a Retail Licence for a Refreshment Room at a Theatre, to endure for one year from the date of issue thereof | Fifteen pounds. |
| 4. For a Club Licence to endure for one year from date of issue thereof | Eighteen pounds. |
| 5. For a Bottle Licence for one year, ending on the last day of March, or for the renewal thereof.. .. | Thirty pounds. |
| 6. For a Bottle Licence for six months, ending on the last day of March, after the issue thereof | Fifteen pounds. |
| 7. For a Retail Licence for one year, ending the last day of March, and for a renewal of any such licence, if issued in respect of any place or premises : | |
| (1) Within any municipality, or within five miles of the limits of a municipality .. | Forty pounds. |
| (2) Not within any municipality or within such limits | Thirty pounds. |
| 8. For a Retail Licence for six months ending on the last day of March after the issue thereof, half the sum payable for such licence for a year | |
| 9. For the allowance of midnight privileges an additional sum of | Five pounds. |
| 10. [Repealed by Act 44, 1885, § 1.] | |
| 11. For the removal of a Licence to other premises | Two pounds. |
| 12. For the transference of a Licence to a person other than the person to whom the Licence was granted | Two pounds. |
| 13. A Temporary Licence—A sum to be fixed by the Resident Magistrate authorising the issue thereof, not being less per diem than | Ten shillings. |

THE THIRD SCHEDULE.

A.

Form of Memorial of Registered Voters objecting to an increase in the number of licensed premises.

To the Licensing Court for the district of

We, the undersigned, registered Voters residing within the limits of the [*Field-cornetcy, Municipality, or other area, describing it*] of do hereby object to the increase of the number of licensed premises or the sale of liquor within the said [*Field-cornetcy, or as the case may be*] under any Retail Licence [or Bottle Licence, or if the objection be to the increase of both descriptions of licence, describe both].

SIGNATURES.

No. 44, 1885.

Names in full.	Places of Residence.

B.

Declaration to be made by the person collecting signatures to a Memorial.

I, A. B., of....., do hereby declare that the persons whose names appear upon the above (or annexed) Memorial marked A. signed the said Memorial in my presence; that such persons are respectively resident within the limits of the field-cornetcy (*or as the case may be*) of....., and that the names of such persons appear upon the list of registered voters for the District of

A. B.

Witness :

C. D.

No. 44, 1885.]

ACT

[August, 11, 1885.]

To amend Law regulating the sale of Intoxicating Liquors.

WHEREAS it is expedient in certain respects to amend the provisions of the law regulating the sale of intoxicating liquors: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. For the purposes of this Act the words "the said Act" shall be taken to mean the "Liquor Licensing Act, 1883;" and so much of the thirty-ninth section of the said Act and of the second schedule thereto as relates to the granting of Sunday privileges, and so much of the provisions of the said Act as may be repugnant to or inconsistent with the provisions of this Act, shall be and the same are hereby repealed.

Meaning of words "said Act" and parts repealed.

2. The second section of the said Act, providing for certain exemptions from the operation of the Act, shall be read and construed as if the following had been inserted and formed a part thereof:—

Exemption from operation of the Act.

(7.) Any person appointed by the President of the Legislative Council and the Speaker of the House of Assembly, as Caterer of the refreshment rooms of the Houses of Parliament, who shall sell any spirituous or other liquors, subject to such rules and conditions as may be laid down by the Joint Refreshment Room Committee of the Council and Assembly respectively.

3. [Repealed by Act No. 25, 1891, § 1.]

4. All club licences then current shall cease and determine upon the thirtieth day of September, 1885, and in case of licences issued for a longer period, there shall be refunded to the licensees a proportionate amount of the sums paid for or in respect of such licences; and no club licence shall be issued under the said Act, nor if issued shall be renewed, unless the applicant shall produce a certificate from

All club licences terminate on 30th September, 1885. Renewals subject to certificate by Magistrate and regulations made by Governor.

- No. 44, 1885. the Resident Magistrate of the district, which shall be issued subject to any regulations made by the Governor, and shall state that it has been made to appear to his satisfaction that the club in respect of which a licence is sought has been established as a *bond fide* club, and is a fit and proper club to receive a club licence: Provided that the granting of such certificate by any Resident Magistrate shall not be held or considered a bar to any enquiry as to whether any such club is or is not a *bond fide* club: Provided, further, that no club licence shall be granted to any diamond mining company or their employes, within the mining areas of Kimberley, De Beer's, Du Toit's Pan, or Bultfontein.
- No club licence to Diamond Mining Companies.
- Penalty for contravention of club licence.
5. Any person who, under colour of a club licence, shall sell liquor to any person not being a member of such club; or any licensed person who shall contravene any condition of his licence, or who shall sell liquor to any person to whom he is not authorised⁽¹⁾ by his licence to sell, shall be liable upon conviction to the penalties prescribed by the seventy-fifth section of the said Act.
- Amendment of 19.
6. From the nineteenth section of the said Act the word "eight" shall be expunged and the word "twenty-one" inserted instead of the the said word "eight."
- Of 189.
7. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting grant to the holder of any retail licence authority to keep open his licensed house during such hours of Christmas Day or Good Friday as such court shall think fit.
- Provision for carrying on business in licensed premises for remainder of term of licence, under certain circumstances.
8. The Resident Magistrate and any two members of the Licensing Court may, either upon or without production of the licence, authorise any person whom they shall consider entitled to the benefit of any licence (other than a wholesale licence or club licence) to carry on the business in the licensed premises for the remainder of the term for which the licence was granted in any of the following cases:
- (1) Whenever any person to whom the licence was granted absconds or abandons the licensed premises.
 - (2) If, during the currency of any licence, the owner is ejected from, or ceases to occupy, the licensed premises or his tenancy thereof is determined by effluxion of time, or by notice to quit, or by any other means except insolvency, and he neglects or refuses to transfer the licence to the person claiming to be entitled to the benefit of the licence as owner or lessor of the licensed premises.
 - (3) When, in pursuance of any contract or agreement between the parties, the licensed person has agreed to transfer the licence to the person claiming to be entitled, and unjustly refuses or neglects to do so.
 - (4) When any licensed person (not being the owner or lessor of the licensed premises) becomes personally disqualified, or has his licence forfeited, and such owner or lessor has not been privy to, nor a consenting party to, the act or default of his tenant, and has the legal right to eject the tenant from such premises, or such tenant agrees to vacate the licensed premises:
- Provided that (except in any case where the licensed person shall have

(1) R. v. Hawkins, 7, Juta, 69.

absconded) the licensed person shall have served upon him notice in writing of the intention to apply for the authority sought, stating the grounds upon which the application is made, and the time and place where it will be considered, at least two days before the time therein fixed.

No. 44, 1888.

9. In any case in which the holder of any licence who shall not be the owner of the licensed premises shall make application under the said Act for the removal of his licence from the licensed premises to any other premises or for the transfer or temporary transfer of the licence from such holder to any other person, such application shall not be considered unless proof be given that at least two days' notice in writing has been given to the owner of the premises or lessor of the applicant when the lessor is not the owner, stating the nature of the intended application, and the time and place when it will be considered.

Transfer of licences.

10. Upon application and upon production of a certificate signed by any field-officer commanding in either the Cape Mounted Riflemen or the Cape Infantry, it shall be lawful for any Resident Magistrate without claiming the payment of any sum of money, to grant to the applicant producing such certificate a licence to be called a regimental canteen licence, and thereupon the person applying shall be entitled and authorised at any time or place during the period specified in such certificate to sell in any quantity any intoxicating liquors to any member of the force in which the said field-officer holds command, but to no other person whatsoever: Provided that every certificate shall specify and set forth

Licence for Regimental Canteen upon certificate of Commanding Officer of certain defence forces.

Details of certificate.

- (1) The name of the applicant;
- (2) That the applicant is a fit and proper person to receive and hold the licence required;
- (3) The period during which the licence is recommended to be granted to the applicant;

and provided, further, that any person holding such regimental canteen licence who shall sell intoxicating liquor to any person not being a member of the said force, shall be liable on conviction to the penalties prescribed in the seventy-fifth section of the said Act as though he were convicted of dealing in or disposing of intoxicating liquors without a licence. Any such regimental canteen licence may at any time be cancelled by the Resident Magistrate on the recommendation of such field-officer as aforesaid.

Penalty for sale to person not member of force.

11. Any person who shall at any time be lawfully managing, superintending or conducting the business of the holder of any licence under the said Act or this Act shall be subject and liable to the same duties, obligations and penalties as such holder: provided that nothing herein contained shall be taken to relieve such holder from any duties, obligations or penalties to which he may by law be subject or liable.

Manager of licensed business subject to same penalties as holder of licence.

12. For the purposes of the twenty-third section of the said Act the several districts of the Cape Town Municipality, defined in pursuance of the fifth section of the Cape Town Municipality Act, 1882, shall be deemed and taken to be wards of the said municipality.

Wards in Cape Town.

13. [Repealed by § 27 of Act No. 25, 1891.]

14. Notwithstanding anything contained in this Act, any licensed person who shall have been granted Sunday privileges, and shall have paid the sum prescribed by the said Act in respect thereof, shall be entitled to such privileges during the currency of his licence.

Sunday privileges to be continued during currency of existing licences.

No. 42, 1887.
Title.

15. This Act shall be read as one with the "Liquor Licensing Act, 1883," and may be cited as the "Liquor Licensing Act Amendment Act, 1885."

No. 42, 1887.]

ACT

[August 9, 1887.

To Prohibit the Supply of Intoxicating Liquor to Her Majesty's Ships and Vessels without proper consent.

Preamble.

WHEREAS it is expedient to prohibit all persons from bringing or supplying intoxicating liquor on board of any of Her Majesty's ships or vessels: Be it enacted by the Governor of the Cape of Good Hope, by and with the advice of the Legislative Council and House of Assembly thereof, as follows:—

Intoxicating
liquor not to be
brought on
board Her
Majesty's ships
without Com-
mander's con-
sent.

1. No person, whether he be or be not licensed under the law of this Colony to deal in intoxicating liquors, shall bring or supply, or attempt to bring or supply, on board any of Her Majesty's ships or vessels lying in any port or harbour of this Colony or in any water subject to the territorial jurisdiction of any Court in this Colony, any intoxicating liquor whatsoever, unless such person shall first have had and obtained the consent of the officer for the time being in command of such ship or vessel, and it shall be lawful for any Officer in Her Majesty's Naval service, or Warrant or Petty Officer of Her Majesty's Navy, or Non-Commissioned Officer of Marines with or without Seamen or Persons under his command, and also for any constable, policeman or peace officer in the service of the Colonial Government, to search any boat or vessel hovering about or approaching, or which may have hovered about or approached any such ship or vessel as aforesaid, and if upon such search any intoxicating liquor be found in or on board of such boat or vessel and there shall be reasonable grounds for suspecting that such intoxicating liquor was intended to be brought or supplied on board any such ship or vessel as aforesaid, to arrest all or any of the persons found in or on board of such boat or vessel and convey him or them, as speedily as circumstances may permit, before the Resident Magistrate having jurisdiction in respect of any offence committed on board any ship or vessel lying in such port or harbour or other territorial water, and every person who shall bring or supply, or attempt to bring or supply, any intoxicating liquor on board any such ship or vessel as aforesaid may be summoned to appear before such Resident Magistrate to answer a charge of contravening the provisions of this section of this Act.

Right of search
of suspected
boat or vessel,
and right of
arrest of
persons.

Right of sum-
mons.

Procedure be-
fore Magistrate,
and penalty.

2. When any person shall be brought before any such Resident Magistrate either under arrest or upon summons under the provisions of the last preceding section of this Act, such person shall be dealt with by such Resident Magistrate and every officer of the law within the local jurisdiction of such Resident Magistrate precisely as though such person were arrested or summoned, as the case may be, for an offence committed on land within the jurisdiction of such Resident Magistrate: Provided that every such Resident Magistrate shall have jurisdiction to try every such person for the offence of contravening the provisions of the last preceding section of this Act, and to sentence him upon conviction to the penalties prescribed by the seventy-second section of the "Liquor Licensing Act, 1883"; and provided, further, that any intoxicating liquor found upon search under the provisions of the last preceding section of this Act, and which such Resident

Forfeiture of
liquor.

Magistrate shall declare to have been intended to be brought or supplied upon any such ship or vessel as aforesaid, shall be by such Resident Magistrate declared to be forfeited for the benefit of the Colonial Government and may be sold or disposed of accordingly.

3. "Intoxicating liquor" in this Act shall have the meaning assigned to it in the "Liquor Licensing Act, 1883."

No. 25, 1891.

Meaning of
"intoxicating
liquor."

No. 25, 1891.]

ACT

[August, 21, 1891.

To amend the Law relating to the Sale of Intoxicating Liquors.

BE it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :—

LICENCES.

1. Sub-section three of section seven of the Liquor Licensing Act, 1883, and section three of the Liquor Licensing Act Amendment Act, 1885, are hereby repealed.

Repeal of en-
actments.

A bottle licence shall authorise the sale on the premises therein specified but not elsewhere of liquor in bottles properly and securely corked and not to be drunk in or upon the premises for which the licence is granted.

Provisions as
to bottle
licences.

With regard to every bottle licence, the following provisions shall apply :

- (1) Not less than one reputed pint bottle of liquor shall be sold at one time to one person.
- (2) Upon Sunday, Christmas Day, and Good Friday no sales shall take place.
- (3) Upon other days, sales may take place only during the hours fixed by the Licensing Court in respect of each licence, not being earlier than eight o'clock in the morning nor later than eight o'clock at night.

The provisions of this section shall not apply to any bottle licence in existence at the date of taking effect of this Act; the rights and liabilities of the holder of every such licence, during the currency thereof, shall be judged of as if this Act had not been passed.

2. If any purchaser of liquor from the holder of a bottle licence drinks such liquor on the licensed premises, or in any road, street, or public place, adjoining or near such premises, then such holder shall, if it shall appear that the drinking aforesaid was with his privity and consent,

Consumption
of liquor bought
from holder of
bottle licence.

- (a) For the first offence be liable to a penalty not exceeding five pounds.
- (b) For any subsequent offence be liable to a penalty not exceeding ten pounds.

For the purposes of this section, the expression "licensed premises" shall include any premises or place adjoining or near the premises actually licensed if belonging to the said holder of the bottle licence, or under his control, or used by his permission.

Meaning of
"licensed pre-
mises."

3. In any proceeding under the second section of this Act, the drinking of any liquor shall be taken to have been done with the privity and consent of any holder of a bottle licence who shall be proved to have uncorked or opened any bottle containing such liquor

What con-
sidered privity
and consent of
holder of bottle
licence.

No. 25, 1891. or to have directly or indirectly assisted any person to uncork or open it.

What hours may be fixed by Licensing Court. 4. Notwithstanding anything contained in sub-section two, section seven, of the Liquor Licensing Act, 1883, it shall be lawful for any Licensing Court to fix any hours between seven in the morning and nine at night for the sale of liquor under any retail licence.

Repeal of enactments. 5. The following portions of the Liquor Licensing Act, 1883, are hereby repealed:—

- (a) Section forty-two, in the fifth paragraph, the words "other than a licence in respect of which notice is not by this Act required to be given."
- (b) Sections fifty and fifty-one, the whole.

INSPECTOR OF LICENCES.

Appointment of Inspectors of Licences. 6. The Governor may, from time to time, appoint in and for any district of the Colony, an inspector of licences and such sub-inspectors as he may think fit, and may remove any person so appointed.

Powers of inspectors. 7. Any inspector or sub-inspector of licences, or any person authorised in writing by an inspector, may enter upon any licensed premises during the hours for which such premises are licensed, and may examine every room or part of such premises.

Duties of inspectors. 8. It shall be the duty of every inspector of licences, in whose district any premises are situated in respect of which previous notice of any application for any licence or for the renewal of any licence under this Act is given, to furnish to the Resident Magistrate seven clear days before the application is to be heard a report, which shall at all reasonable times be open to public inspection, containing the following particulars:—

LICENCES FOR NEW PREMISES.

- (1) A description of the house, premises, and furniture.
- (2) A statement whether the applicant is a fit and proper person to have the licence applied for, and is known to be of good character and repute.
- (3) A statement whether the bestowal of the licence sought for is or is not in the opinion of the inspector required for public convenience.
- (4) A statement whether the applicant appears to be or not to be the true owner of the business or the premises proposed to be licensed.

RENEWAL OF EXISTING LICENCE.

- (5) If the application be for a renewal by a person who has held a licence during the whole or any part of the preceding year, a statement as to the manner in which the house has been conducted during such year or part thereof. If any convictions have been recorded against the licensee the particulars of the convictions shall be stated. The report shall also contain a statement as to the character of the persons frequenting the house.

The statement or report referred to in this section shall set forth in detail the facts upon which any conclusion or expression of opinion is based, and if the inspector is unable to supply any of the foregoing particulars he shall specially state in his report the reason of his inability.

And the Resident Magistrate shall lay the said report before the Licensing Court at every meeting called to consider the applications therein referred to.

No. 25, 1891.

9. The provisions of sections seventy, seventy-one and seventy-two of the Liquor Licensing Act, 1883, shall not apply to any district for which an inspector of licences may be appointed during the term of such appointment, but the said provisions shall remain and be in full force in every district where there is no such inspector.

Sections 70, 71 and 72 of Liquor Licensing Act, 1883, how affected by this Act.

10. It shall be the duty of an inspector to attend every meeting of the Licensing Court for his district in order to afford information and assistance to the court in matters connected with the working of this Act, and every inspector so attending may be cross-examined on oath as to the matters contained in his report by any person, or the agent of any person, who is interested in the grant or renewal of the licence dealt with in the said report.

Inspectors to attend meetings of Licensing Court.

11. Every inspector or sub-inspector of licences shall have the same power and authority which are conferred upon a Justice of the Peace by sections thirteen and fourteen of "The Sale of Foods and Drugs and Seeds Act, 1890," in regard to entering upon licensed premises and searching for and seizing and carrying away any liquor found therein, and also in regard to the purchase of liquor for purposes of analysis.

Powers of inspectors.

12. Any inspector or sub-inspector of licences who directly or indirectly receives or agrees to receive from any person any fee, advantage or reward whether pecuniary or of any other kind, on account of anything done or to be done by him in connection with his office or employment, or on account of omitting to perform his duties under this Act, shall be dismissed from his office, and shall also be liable, on conviction by a competent court, to imprisonment with or without hard labour for a period not exceeding twelve months. And any person who directly or indirectly gives, offers or promises to give any such fee, advantage or reward, shall for every such offence be liable to a fine not exceeding one hundred pounds.

Illegal payments to inspectors.

But nothing in this section shall apply to any payment or salary received from Government by an inspector or sub-inspector for the performance of his duty.

LOCAL OPTION.

13. The following provisions shall apply in regard to the granting and renewal of licences after the taking effect of this Act:

Local option.

- (1) If the application is for a new licence, it shall not be lawful for the Licensing Court to grant the same unless there shall be lodged with the Resident Magistrate of the district at least four days before the meeting of the Licensing Court to consider the said application, a memorial or memorials signed by a majority of the voters registered for the election of members of the Divisional Council within the limits of the Divisional Council district, the municipality or (where a municipality is divided into wards) the ward or district of the municipality or the place where the Villages Management Act of 1881 is in operation, in which district, municipality, ward, or place the premises proposed to be licensed are situated, approving of the issue of the said licence.

New licence.

No. 25, 1891.

Renewal of
existing licence.Signature of
same person of
more than one
memorial.Cases in which
memorial under
first sub-section
hereof not
necessary.Absence of
memorial ob-
jecting to re-
newal of licence.How voters
who cannot write
to sign memo-
rial.Municipal dis-
tricts of Cape
Town to be
treated as
"wards."Secs. 24, 25
and 26 of
Liquor Licens-
ing Act, 1883, to
apply."Voters"
Roll."

- (2) If the application is for the renewal of an existing licence, it shall not be lawful for the Licensing Court to grant the said renewal, in case there shall have been lodged with the said Resident Magistrate, within the period aforesaid, a memorial or memorials signed by two-thirds of the voters, registered as aforesaid within the said district, municipality, ward or place respectively, objecting to the said renewal, and in case it shall also be proved that written notice of an intention to lodge such a memorial was given to the holder or person entitled to the benefit of the existing licence and to the owner of the licensed premises—if resident in this Colony—by some person signing the same at least one month before the day fixed by law as the day upon or before which any application for a renewal of the licence in question should be made to the Resident Magistrate.
- (3) If upon any memorial approving of the issue or renewal of any licence, and upon any memorial objecting to the issue or renewal of the same licence the name of the same person shall appear, then the said name shall be of no effect, and shall be considered as if struck out of both memorials.
- (4) It shall not be necessary for any person to whom a licence has been transferred in terms of section fifty-six of Act 28 of 1883, or who has been authorised to remove his licence under the provisions of section fifty-seven of the said Act or for any person who has been authorised to carry on business in any licensed premises for the unexpired term of any licence under section eight of Act 44 of 1885, to lodge before applying for a renewal of his licence, the memorial referred to in the first sub-section hereof; but every such application shall be dealt with by the Licensing Court as if the said sub-section had not existed.
- (5) The absence of a memorial objecting to the renewal of any licence, or the fact that such memorial is signed by less than two-thirds of the said voters, shall not render it imperative upon the Licensing Court to grant the renewal.
- (6) Any memorial lodged for the consideration of any Licensing Court may, in the case of voters who are unable to write be signed by such voters placing their cross or mark upon the same; but no such cross or mark shall be of any effect unless duly attested by the signature of at least one witness who is a registered elector for the Divisional Council.
- (7) For the purposes of this and two next succeeding sections, the several districts of the Cape Town Municipality defined in pursuance of the fifth section of the Cape Town Municipality Act, 1882, shall be taken to be wards of the said municipality.

14. With respect to every memorial lodged under the last preceding section, the provisions of sections twenty-four, twenty-five, and twenty-six of the Liquor Licensing Act, 1883, shall *mutatis mutandis* apply as if the same were fully set out herein.

15. From and after the taking effect of this Act, the Secretary of

every Divisional Council shall, in making out the "Voters' Roll," as required by section nineteen of Act 40 of 1889, observe the following directions: No. 35, 1891.

- (1) He shall distinguish by grouping together upon the said roll the names of all voters who are registered within any area which falls within the limits of any municipality, or corporate town, or within any area in which the Villages Management Act of 1881 is in operation.
- (2) In the case of any municipality or corporate town divided into wards or districts he shall similarly distinguish the names of all voters who are registered in each such separate ward or district.

MISCELLANEOUS.

16. No importer or general dealer who is not also the holder of a wholesale or a bottle licence shall give or supply any liquor to any customer or other person in the room or rooms in which he carries on his business as such importer or general dealer. Importer or general dealer.

17. No holder of a retail liquor licence, who is at the same time an importer or general dealer, shall sell, deal in, or dispose of any liquor in any room or place which is not entirely separated by substantial walls or partitions from the room or rooms in which such person carries on his importer's or general dealer's business, such walls or partitions to contain no door or other opening. Provision where holder of retail licence is also an importer or general dealer.

18. Any contravention of the provisions of either of the two preceding sections of this Act shall subject the offender to the penalties provided by law, in the case of persons selling, dealing in, or disposing of intoxicating liquor without a licence. Penalty.

19. In sub-section six of section seventy-three of the Liquor Licensing Act, 1883, the word "spirits" wherever it occurs shall be expunged, and the word "liquor" substituted. Amendment in "Liquor Licensing Act, 1883."

20. Any master or other person employing workmen, servants, or labourers, who pays or causes any payment to be made to any such workman, servant, or labourer in or at any premises licensed for the sale of liquor, or where liquor is sold, shall for every such offence be liable to a penalty not exceeding ten pounds. But nothing herein contained shall extend to any holder of any liquor licence who pays upon his own licensed premises the workmen, servants, or labourers employed in his licensed business. Payment of wages to workmen, servants, or labourers.

21. If any person, other than the licence holder, his agent or servant, or a person lodging in the licensed house, be found in any bar on the premises of the holder of a retail licence during the hours in which the sale or disposal of liquor to the public is prohibited, it shall be taken to be *prima facie* evidence of a sale of liquor during such hours. The licence holder on whose premises any such person is found during such hours shall be liable to a penalty of not more than five pounds: but nothing in this section contained shall apply in the case of persons passing through any bar in any licensed premises for the sole purpose of obtaining access to any other part of such premises. What to be prima facie evidence of illegal sale.

22. Save in the case of licences already in existence at the taking effect of this Act, the seventy-ninth and eightieth sections of the Liquor Licensing Act, 1883, are hereby repealed. Penalt Repeal of enactments.

23. Nothing in this Act contained shall preclude any person who Lodgers.

No. 25, 1891. is licensed to sell liquor to be consumed on the premises from selling such liquor at any time to any person lodging in his house.

Sale of liquor
at railway sta-
tion refreshment
rooms.

24. The fifth sub-section of section seventeen of the Liquor Licensing Act, 1883, is hereby repealed. With regard to retail licences for the sale of liquor at railway station refreshment rooms, the following provisions shall apply :—

- (1) Upon week days, liquor shall be sold only within a reasonable time before and after the arrival or departure of any passenger or mixed train at a station, such time to be fixed by the Commissioner in the certificate authorising the grant of the licence.
- (2) Upon Sunday, Christmas Day, or Good Friday, liquor shall be sold at any station which is not a terminal station only during the time that a passenger or mixed train is drawn up at such station.
- (3) No liquor shall be sold on Sunday, Christmas Day, or Good Friday, at any terminal station.
- (4) It shall be lawful for the Commissioner to insert in any certificate authorising the grant of such licence such conditions with regard to the class of persons to be supplied with liquor on Sundays, Christmas Day, or Good Friday, as to him may seem fit; and all such conditions may be incorporated in any licence granted by virtue of such certificate and shall be deemed to be conditions legally inserted therein.

Penalty for
false representa-
tions.

25. Every person who, by falsely representing himself to be a lodger, buys or obtains or attempts to buy or obtain at any premises any liquor during the period for which such premises are to be closed under this Act or otherwise, shall upon conviction be liable to a penalty not exceeding five pounds.

Sunday deal-
ing.

26. The Licensing Court may, if it shall be satisfied of its being for the benefit and convenience of the public so to do, at any licensing meeting, grant authority to the holder of any retail licence to supply on Sunday to any person who takes and pays for a *bond fide* lunch or dinner a reasonable quantity of liquor to be consumed at such meal.

Repeal and
re-enactment of
laws.

27. The thirteenth section of the Liquor Licensing Act Amendment Act, 1885, is hereby repealed. Sub-section three of section two of the Liquor Licensing Act, 1883, is hereby expressly re-enacted.

Habitual
drunkards.

28. If it shall be proved to the satisfaction of any Resident Magistrate that any person charged before him and found guilty of contravening section nine of the "Police Offences Act, 1882," has been during the twelve months preceding the date of such finding four times convicted of drunkenness by a competent court, then it shall be lawful for such Magistrate to inflict a punishment of imprisonment with hard labour for any period not exceeding twelve months.

Governor may
define areas for
certain pur-
poses.

29. It shall be lawful for the Governor by proclamation, when desired by any municipality or Village Management Board, to define areas in the neighbourhood of mines, manufactories, or other centres of labour, within which areas all bottle stores and canteens shall be closed at noon on Saturday or such other one day of the week as the Governor may determine; any holder of a retail or bottle licence within any such area who shall sell or dispose of liquor contrary to the terms of such proclamation after the hour of noon upon a day so

determined shall, upon conviction be liable to all the penalties provided for selling, dealing in, or disposing of intoxicating liquor without a licence. .

No. 25, 1891.

30. The costs incurred by the members of any Licensing Court in connection with legal proceedings instituted against them in their official capacity shall, unless the Court before which the proceedings are taken shall order the said costs to be borne by the opposite party or by the said members *de bonis propriis*, be paid to them out of the Colonial Treasury.

Costs.

31. For the purposes of the Liquor Licensing Act, 1883, the Liquor Licensing Act Amendment Act, 1885, and for the purposes of this Act, the article known as Kaffir beer shall in all cases be regarded as and taken to be an intoxicating liquor.

Kaffir beer.

32. This Act shall be read as one with the Liquor Licensing Act, 1883, and the Liquor Licensing Act Amendment Act, 1885, and may be cited as the Liquor Act, 1891.

Short title.

MASTERS AND SERVANTS.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Act 15—1856. 2. „ 18—1873. 3. „ 28—1874. 4. „ 7—1875. 5. „ 30—1889. 6. „ 35—1886 (Employers' Liability). 7. Ord: 81—1830, §§ 12, 13 (Trade beyond Boundaries). 8. Act 22—1857 (Native Children). | <ol style="list-style-type: none"> 9. Act 6—1861, §§ 5, 6 (Prescription Debts). 10. „ 22—1867, § 2 (Passes to Natives). 11. „ 14—1870, §§ 2-5 (Cattle Removal). 12. „ 7—1879, §§ 4, 11, 12, 20, 21 (Reformatories). 13. „ 8—1889 (Apprenticeship of Juvenile Offenders). |
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No. 15, 1856.]

AN ACT

[June 4, 1856.]

To Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices.

Preamble.

WHEREAS it is expedient to amend and consolidate the laws regulating the relative rights and duties of masters, servants, and apprentices: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:

Repugnant laws repealed.

1. From and after the commencement and taking effect of this Act, the Ordinance entituled "An Ordinance for amending and consolidating the Laws regulating the relative rights and duties of Masters, Servants, and Apprentices," enacted by the Governor of the Cape of Good Hope, with the advice of the Legislative Council thereof, and bearing date the first of March, 1841, and all Orders in Council confirming or continuing the said Ordinance (except in so far as the said Ordinance, or any of the said Orders, repeals any former law or usage), the Act No. 4, 1855, entituled "An Act for Encouraging the Importation of European Labourers into this Colony," and all other laws and regulations repugnant to any of the provisions of this Act, shall be repealed, and the same are hereby repealed accordingly.

Interpretation clause.

2. For the purposes and within the meaning of this Act, unless it be otherwise specially provided, or there be something in the subject or in the context repugnant to such construction,—1st, The word "Governor" shall mean the officer lawfully administering the Government of this Colony; 2nd, The word "servant" ⁽¹⁾ shall be construed and understood to comprise any person employed for hire, wages, or other remuneration, to perform any handicraft or other bodily labour in agriculture or manufactures, or in domestic service, or as a boatman, porter, or other occupation of a like nature; 3rd, The word "apprentice" shall be construed and understood to comprise any person indentured or bound by any contract of apprenticeship made according to law, as apprentice to any other person; 4th, The word "master" shall be construed and understood to comprise any person, whether male or female, employing for hire, wages, or other remuneration, any person falling within the before-mentioned definition of the word "servant," or to whom any person falling within the before-mentioned

(1) A stationer's assistant is not a "servant" within the meaning of this section. — *Falconer v. Juta*, Buch, 1879, p. 22. See also note to § 2, *infra*. *Roper v. Dormer* 7 J. 3.

definition of the word "apprentice" shall have been indentured or bound by any contract of apprenticeship, made according to law; 5th, The words "contract of service" and "contract of apprenticeship" shall respectively be construed and understood to comprise any agreement, whether oral or written, whether expressed or implied, which any person falling within the before-mentioned definitions of the word "servant" or "apprentice" shall respectively have entered into or made, according to law, with any person falling within the before-mentioned definition of the word "master," for the performance of any work or labour of any kind hereinbefore mentioned; 6th, The words "Magistrate" and "Magistrates" shall be construed and understood to comprise the Resident Magistrates duly appointed for the different districts of this Colony; 7th, The words "this Colony" shall be construed and understood to comprise all islands, and other territories whatsoever, which are dependent on the Colony of the Cape of Good Hope, and subject to the Government thereof; 8th, The word "month" shall be construed and understood to comprise the period of one calendar month; 9th, The words "father," "parent," "relative," "husband," and "wife" shall be respectively construed and understood to comprise reputed fathers, parents, relatives, husbands, or wives, as well as actual parents and relatives, and lawful husbands and wives; 10th, The words "officer" and "proper officer," when used with reference to the attestation or making of contracts of service of apprenticeship, or to the transfer and assignment of apprentices, shall be construed and understood to comprise every person who shall have been appointed by the Governor to attest or make such contracts; 11th, All words in this Act, and in the various rules and regulations hereinafter enacted, importing the singular number or the masculine gender only, shall be construed and understood to include several persons as well as one person, and females as well as males.

CHAPTER I.

1. Notwithstanding the repeal, by the Ordinance aforesaid, of the law thereby repealed, the courts of this Colony, in all cases which are now or shall be hereafter depending before the same, arising out of or respecting the formation or dissolution of contracts of service or apprenticeship, or touching or concerning any rights, duties, powers, liabilities or other matters or things arising out of or proceeding from any contracts of service or apprenticeship, or any of the mutual relations subsisting between masters and servants or apprentices, shall respectively try, judge, and determine the said causes according to the law of this Colony, respecting and applicable to bilateral contracts in general, except when other provisions touching and concerning any such matter and thing as aforesaid shall have been made in this Act, or by any other Law not repealed by the Ordinance aforesaid.

In cases not provided for, the law of bilateral contracts in general to prevail.

2. The beforementioned repeal shall not annul or affect any contracts of service or apprenticeship entered into previously to the time when this Act shall take effect, and which, under and by virtue of, and according to any laws in force within this Colony on the day previously to the taking effect of this Act, were then subsisting legal and valid contracts.

Repeal aforesaid not to annul contracts entered into previously to the taking effect of this Act.

No. 15, 1856.

Contracts
liable to be set
aside on account
of fraud, &c.

3. Nevertheless any such last-mentioned contract of service or apprenticeship, to be performed within this Colony, shall be liable to be set aside by any Magistrate having jurisdiction over the parties, or any competent court, upon reasonable proof being made to the satisfaction of such Magistrate or court, that either of the parties to such contract was induced to enter into the same by any fraud, misrepresentation, or concealment.

CHAPTER II.

ON THE FORMATION OF CONTRACTS OF SERVICE.

Contracts
entered into out
of the Colony,
how to be
certified.

1. No contract of service made elsewhere than within the limits of this Colony shall be of force or effect within this Colony, except the same shall have been made in writing, and be duly certified by the British consul, or other similar officer, at the place where the same was made, or if there be no such officer, then by such Magistrate of such place, or other proper authority: but contracts not so certified shall, notwithstanding, have force and effect in this Colony, upon other proof of such contract, to the satisfaction of the Magistrate before whom the same shall come in question.

Every contract
shall be deemed
to be entered
into for one
month, unless
otherwise
specified: ex-
cept the servant
be non-resident,
or shall work by
the piece.

2. Every contract of service, whether oral or written, the term of endurance of which shall not have been expressly specified and limited by such contract, shall, in the absence of sufficient proof to the contrary, be deemed and taken to be for the term of one month from commencement thereof; save and except contracts for service in any trade or handicraft, whereby it shall not have been stipulated that the servant shall, during the term thereof, reside in the house of, or on the premises of the master, which shall be deemed and taken to endure only until the night of Saturday of the week on any day of which it shall have been stipulated that the service shall commence; and contracts for executing any particular piece of work specified in the contract which shall expire so soon as the work is finished, and when the work is not finished within a reasonable time, may be put an end to by the master, after the lapse of a period of time reasonably sufficient for finishing such work. ⁽¹⁾

No oral con-
tract to be
binding for
more than one
year, and not
valid unless
the time to be
entered upon
shall be stipu-
lated.

3. No oral contract of service shall be valid or binding for any longer term than one year from the period fixed for the commencement of the service stipulated for by such contract; and no such oral contract shall be valid or binding in any case, unless it be stipulated in such contract that the service, thereby stipulated for, shall be entered upon by the servant within one month from the date of the contract.

4. [Repealed by § 1 of Act 18, 1873.]

No contract
to be valid or
binding for a
longer period
than five years.

5. No such contract so entered into before a Magistrate or other proper officer, shall be valid or binding for a longer period than five years from the date thereof, if entered into within this Colony; and no such contract shall endure longer than five years from the day of the

⁽¹⁾ Where a compositor, under an agreement by which he was paid at a rate calculated per 1,000 ens and entitled to a week's notice, sued his employer under § 14 of Act 18 of 1873 for withholding wages in lieu of notice, and no exception to the jurisdiction was taken:

Held, that he was a servant in terms of the Masters and Servants Act: *Held* also that on appeal to the Supreme Court the objection that the Magistrate had no jurisdiction under Act No. 18, 1873, inasmuch as the Act only contemplated the withholding of wages already earned, could not be raised, as it had not been taken in the court below. *Baker v. Dormer*, 1 Juta, 253.

commencement of the service, when such contract shall be entered into elsewhere than in this Colony. No. 15, 1856.

6. All contracts of service entered into before a Magistrate or other proper officer, within the limits of this Colony, shall be drawn up as nearly as possible in the following terms: Form of contract of service.

Be it remembered,—that on this——day of——in the year of our Lord——, A. B., of——, and C. D., of——, appeared before me, E. F. (Resident Magistrate, or officer specially appointed by the Governor to attest contracts of service for the district, as the case may be, with his usual description), and in my presence, signed their names (or made their marks as the case may be) to the following contract of service: The said A. B. agrees to hire the service of the said C. D., and the said C. D. agrees to render to the said A. B. his service at all fair and reasonable times, and in the capacity of——for——commencing on the——day of——instant, and terminating on the——day of——in the year——. And it is further agreed that the said A. B. shall pay to the said C. D., as such servant as aforesaid, wages after the rate of——by the day (week, month, or year, as the case may be), and that such wages shall be paid on the——day of each week (or month as the case may be).

(Here add any special agreement compatible with the law, and not adverted to in this form.)

(Signed) A. B.,
C. D.

The preceding agreement was signed by the abovenamed parties, in my presence, on the day and year above written, voluntarily, the same being, as far as I am able to judge, understood by them respectively.

(Signed) E. F.,
Resident Magistrate (or officer specially appointed by the Governor to attest contracts of service for the district).

7. No contract of service for a month or any longer period shall be deemed and taken to have expired until at least one month's notice, calculated from, and inclusive of, the day of giving such notice, shall have been given by either of the parties to the other party, unless it shall have been expressly stipulated that no such notice shall be necessary; and when the service shall be a weekly one, a week's notice shall be necessary: Provided that nothing herein contained shall be construed so as to enable any party to any contract of service to determine the same without the consent of the other party, before the expiration of the term of service originally agreed upon.-(¹)

In the absence of special agreement, one month's notice is required before a contract shall be deemed to have expired.

(¹) Where the parties stand in the relation of master and servant, the mere fact that insufficient notice of discharge has been given does not confer on the servant the right of bringing an action against the master for damages for wrongful dismissal, unless such notice has been acted upon, or unless the period fixed by the notice actually expired.

If, before the expiration of the notice of discharge, a servant grossly misconducts himself in the service and is dismissed, the master may avail himself of such misconduct as a defence to an action brought against him for wages accruing after such misconduct and dismissal, or to an action for damages sustained by the servant by reason of not being employed after such misconduct. *Nixon v. Blaine & Co.*, Buch., 1879, p. 217; *Kenrich v. Central D.M. Co., Ltd.*, 3 High Court 414; *Douglas v. L. & S. A. Exp. Co.*, 4 High Court 275; *Donaldson v. Webber*, 4 High Court 403; *Hunt v. E. P. Boating Co.*, 3 E.D.C. 12.

No. 15, 1856.

How such
notice may be
waived.

8. When any such notice as is hereinbefore mentioned shall have been given by either of the parties to the other, and the master shall suffer the servant to remain, or the servant shall remain in his service after the day on which according to the notice given the contract of service should expire, such notice shall be deemed and taken to have been withdrawn and passed from, and the contract of service shall continue to endure as long, and in like manner, as if no such notice had been given unless it shall have been otherwise expressly and specially agreed between the parties.

Servants hired
to reside on the
premises to be
supplied with
food and lodg-
ing, unless
otherwise agreed
upon.

9. In all contracts, whether oral or written, by which it is stipulated that the servant shall reside on the premises of his master, and wherein it shall not be expressly provided that the master is not to supply food and lodging, the master shall be deemed and taken to have engaged to provide such servant, and such of his family (if any) as, shall have included in the contract, in manner hereinafter mentioned in section twelve of this chapter, with lodging and sufficient food of good and wholesome quality, during the continuance of the contract.

When rate of
wages not
specified, the
Magistrate to
fix such rate by
custom.

10. In case of any action for non-payment of wages, due and payable by virtue of any contract of service, being brought before any Magistrate, or other competent court by any servant, and when the rate of wages at which such contract was made shall not be proved to the satisfaction of such Magistrate or Court, such Magistrate or Court is hereby required to fix the rate of wages at that usually paid in the district or place in which the service for which the wages are claimed was performed, reference being had to the skill and ability of the servant, and to give decree accordingly.

Provision in
case of sickness.

11. When any servant shall, in consequence of any sickness or accident, which shall not have been occasioned by his own fault, be rendered incapable of performing his master's service, he shall, in the absence of any special provision in the contract to the contrary, be entitled to receive his full wages during the first month of such incapacity, and every other benefit, privilege, or advantage, whether for himself or his family, stipulated for in the contract of service during the whole period of such incapacity, unless the stipulated term of service shall sooner expire, or unless the period of such incapacity shall extend to a longer period than two months; in which latter case the master shall be entitled, if he shall so think fit, at the expiration of such two months, or at any time afterwards during which such incapacity shall uninterruptedly continue, to treat and consider the contract of service as rescinded and determined, to all intents and purposes whatsoever, he, the said master, being however bound, before

Where a servant on a monthly hiring wilfully deserts his service without notice during the month:

Held, that he was not entitled to claim any wages for the service rendered during that month up to the day of his desertion. *Bassaramadoo v. Morris*, 6 Juta 28.

Where a servant, after his discharge from his master's employment, made an admission with reference to a transaction performed by him by his master's orders during his engagement: *Held*, that the statement so made was not admissible in evidence against the plaintiff, the former master. *Wood v. Dersley* 2 E. D. C. 200.

In estimating the amount of damages to be awarded where a servant has been improperly dismissed before the termination of his time of service, the Court will take into consideration any employment which may have been obtained by the servant after dismissal and before the time fixed for the expiration of the contract. *Denny v. S. A. Loan, Mortgage, and Mercantile Agency*, 3 E. D. C. 47.

being so entitled to consider the said contract as determined, to make good all stipulations therein mentioned and agreed upon, up to and for the day on which he shall declare his intention to treat and consider the said contract as rescinded, with, however, the limitation as to wages, hereinbefore provided: Provided, however, that if the master shall not think fit, at or after the expiration of such two months as aforesaid, to treat the contract of service as determined and rescinded, but shall permit the servant to remain in his service, such servant shall not be entitled to claim any portion of the wages beyond wages for the first month as aforesaid, or any other benefit or advantage stipulated for in the contract of service (save and except such food and lodging for himself and family as by the contract of service the master had engaged, or shall be deemed and taken to have engaged, to provide him with), for any period subsequent to such two months during which such incapacity as aforesaid shall continue: And provided, always, that no servant hired by any contract expressly to perform service in any trade or handicraft, shall be entitled to receive the wages, or any other benefit or advantage stipulated in the contract of service, for any part of the time during which he shall have been rendered incapable of performing his master's work by any such sickness or accident as aforesaid, save and except such food and lodging for himself or family as by the contract of service his master has engaged to provide him with, such food and lodging to be provided during such incapacity as aforesaid, unless the contract of service shall sooner expire, or unless such incapacity shall extend to a period longer than one month, in which latter case the master shall be entitled, if he shall so think fit, under the same powers and conditions in every respect as in this section before set forth, to treat and consider such last-mentioned contract of service as absolutely, and, to all intents and purposes, determined and rescinded.

No. 15, 1856.

12. All contracts of service stipulating for the services of the wife of any servant, together with those of her husband, shall be made or executed by her in like manner as the same shall be made and executed by her said husband: And it shall be lawful for the father, or, in the event of his death or absence, then for the mother, of any child under the age of sixteen years, to contract for the service of such child together with his own, in like manner as such person may contract for his own services; and when such contract shall be in writing, the name and age of every such child shall be clearly set forth and specified in the contract: Provided always, that nothing herein contained shall give to the master of any such parent any claim on the services of any such child beyond the period for which the parent shall be engaged, nor beyond the period when such child shall attain the age of sixteen; nor to the services of any other child of the contracting parent, whether under colour of such last-mentioned child having been fed or clothed by the master, or having been born while the parent of such child was in the said master's service, or under any other pretence whatsoever.

Contracts for the services of husband, wife, and children how to be entered into.

13. On the death of any person being at the time, together with his wife and any child, under contract as aforesaid, the contract shall become null and void, with respect to such wife and children, at the expiration of one month after the death of such person.

One month after the death of the husband, contract to be null and void with regard to the services of the wife and children.

No. 16, 1855.

Wife and children of the servant not to reside on the premises of the master, unless stipulated in the contract, nor the master to claim their services by reason merely of their residence on the premises.

An agricultural labourer or herdsman to remain in his master's service during public commotion or invasion of the Colony, or if called out for burgher service the master to provide for his family.

14. It shall not be lawful for any person entering into any contract of service by which it is stipulated that the servant shall himself reside on the premises of the master, to keep his wife and children on the premises of his master, unless when the master shall have also stipulated in such contract that this shall and may be done; Provided that, when the master shall have so stipulated, it shall not be lawful for him to claim the services of any such wife or child by reason merely of their residence on his premises.

15. When, in times of public commotion or invasion of the Colony, the Governor shall deem it expedient to call out for service any portion of the burgher force of any division of the Colony, under the Act No. 16 of 1855, ⁽¹⁾ every person under contract of service under this Act, as an agricultural labourer or herdsman, for any period not less than one month, to any master residing in such division, shall, if the period of service contracted for should expire during the persistence of such commotion or invasion, notwithstanding such expiration, be bound to continue in the service of his employer, on the terms of the contract under which he had been serving, until the cessation of such commotion or invasion, and until the services of the burghers of such division shall be dispensed with for the occasion: Provided that, if any such servant shall at any time be called out for burgher service under the said Act No. 16, 1855, ⁽¹⁾ the master of such servant shall, during the absence of such servant on such duty, be bound to permit the family and property of such servant to remain upon his premises, and to provide for the same, in the same manner as he would have been bound to do by the contract of service, if such servant had not proceeded to the performance of such duty.

CHAPTER III.

ON THE APPRENTICESHIP OF CHILDREN. ⁽²⁾

Contracts to be in writing.

1. No contract of apprenticeship shall be valid unless, at the time of its being entered into, it shall have been reduced into writing, and signed with the name, or, in case of illiterate persons, with the mark, of the master and parent, ⁽³⁾ or guardian, as the case may be, of the apprentice, and also of the apprentice if of the full age of sixteen years.

Children under 16 to be apprenticed to agricultural labour only till that age.

2. No contract of apprenticeship by which any child under sixteen years, if a female, and eighteen years if a male, may be apprenticed as an agricultural or domestic servant, shall be valid for any longer period than until such child shall have attained the full age of sixteen years, if a female, and eighteen years if a male.

Children, not destitute, above 10 and under 16 years, may be apprenticed till

3. Children not being in a state of destitution, above the age of ten and under the age of sixteen years, may be apprenticed by their

⁽¹⁾ Act 16 of 1855 is repealed by Act 7 of 1878 (Defence).

⁽²⁾ Any child convicted of any offence may be bound to some useful calling or occupation until such child shall attain the age of 16 years. Act 7, 1879 (Reformatory Institutions), § 4. See also Act 8, 1889, *infra*.

⁽³⁾ The conviction of a minor for neglect of duty under a contract of service entered into by him without the consent of his parent, quashed. Buch. 1879, p. 288.

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fathers, ⁽¹⁾ or in the case of fatherless children, by their mothers, or, in case of orphans, having guardians, by their guardians, until they shall have attained their twenty-first year, or for any shorter period, and due provision for the maintenance, clothing, and instruction of every such apprentice shall be made in the contract of apprenticeship: Provided always, that every contract of apprenticeship, whereby any child under the age of ten years, not being in a state of destitution, shall be apprenticed, or attempted so to be, shall be null and void to all intents and purposes whatsoever; save and except a contract of apprenticeship executed by the parent or guardian, and the master, in the presence of a Resident Magistrate and attested by such Magistrate to be a contract which appears to him to be for the benefit of the child.

4. ⁽²⁾ Any minor of the full age of sixteen years or upwards may, by his own consent, be apprenticed for any term not exceeding five years to any trade, in the practice of which any peculiar art or skill is required, but not otherwise: Provided always that in the case of such minor or minors being females, they may, with such consent, be apprenticed to domestic service for any such period as last aforesaid.

Persons of 16 years and upwards may, by their own consent, be apprenticed for five years.

5. ⁽³⁾ The Resident Magistrates of the Colony shall be *ex officio* the guardians, within their respective districts, of all such minors as in the last preceding section mentioned, which minors have no parents or guardians within the Colony, or none discoverable, and such Resident Magistrates may lawfully indenture such minors.

Resident Magistrate to be the guardian, *ex officio*, of minors who have no parents or guardians.

6. When any parent or parents shall abandon or desert, or by death shall leave, in a state of destitution any child under the age of sixteen years, the person with whom such child shall have been so left, or by whom such child shall be found in such state of destitution, shall,

Destitute children, how to be treated in the first instance.

⁽¹⁾ In the Supreme Court on the 9th of August, 1889, the Chief Justice said that as judge of the week a case had been brought before him for review. It was a case where a lad, Peter Kruger, was charged with absenting himself from his master's service without proper cause or authority. The lad was found guilty, and sentenced to receive fifteen cuts with a cane. It appeared that the lad was only fifteen years of age, and that no proper contract of apprenticeship had been executed with the master. There seemed, however, to have been a verbal contract between the father of the child, Peter Kruger, and the master. The question was whether under such a contract the child could be punished for the offence of desertion. He (the Chief Justice) had looked over the Masters and Servants Act and he found there were only two ways in which a minor could be contracted for, either by contract of apprenticeship or by engaging the services of the child, together with the services of one of the parents. If one of the parents served the same master with the child, then the contract was valid. But unless this was done there would have to be a regular contract of apprenticeship. In the present case there was no such thing. The contract was made without either of the parents serving the same master at the same time as the lad. There appeared to him (the Chief Justice) to be no legal contract, and so the lad could not be punished for desertion. The sentence of the Magistrate was accordingly quashed.

⁽²⁾ Where an apprentice, who had been duly articulated before a Resident Magistrate for a term of five years, during that period absented himself from his master's service, and then agreed with the master that instead of being punished for such absence by the Magistrate, he would work out the time he had been absent after the expiration of the term of apprenticeship, but at the end of the five years repudiated the agreement, the master cannot withhold the wages earned by the apprentice under his articles, on the ground that he had not carried out the agreement to work out the lost time.

Costs follow the result, where an appeal is based upon a question of law which is not ambiguous. *Njoli v. Stewart*, 1 E.D.C. 147.

⁽³⁾ A Magistrate has no power to sentence a prisoner, on his trial for theft to be indentured as an apprentice. *R. v. Jan & Booy, Buch*, 1874, p. 63.

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with all convenient speed, give notice thereof to the nearest Field-cornet, or directly to the Magistrate, in order that means may be taken for providing for the maintenance and education of such child, by apprenticeship, in manner hereinafter mentioned; and if any person shall be duly convicted by any Magistrate or other competent court of detaining in his possession or employment any such destitute child as aforesaid for a longer period than one month without giving such notice, every such person shall forfeit and pay, at a rate not exceeding twenty, nor less than five shillings for each month that such child shall have been detained; and every such sum so forfeited shall be paid into the Public Treasury, and all reasonable expense incurred in giving such notice, and for the maintenance of such child until removed by the proper authority, shall be paid from the said Treasury.

Destitute children how to be apprenticed.

7. The Field-cornet or Resident Magistrate shall, upon receiving such notice as aforesaid, cause the child to be removed to the residence of such Magistrate, and the said Magistrate shall, unless when it shall be made to appear to him that the child is actually not in a state of destitution, or is able to earn his own livelihood (in either of which events he shall decline to act in the case), cause such child to be lodged and provided for at the public cost, until he shall have sufficiently ascertained by inquiry, which he is hereby required to cause to be made, whether such child have any relative, fit, proper, and willing to maintain and take care of him, and if he shall discover any such relative or relatives, he shall apprentice such child, either to the sole relative, or to that one among the several relatives of whom it shall appear most for the interest of such child to become the apprentice; and if no such fit and proper relative be found, he shall apprentice him, as soon as a suitable opportunity can be found, to some fit and proper person, until he shall have attained his eighteenth year, or in the case of females, until their sixteenth year, or for any shorter period that may be deemed advisable. And every such Magistrate shall give public notice in the *Government Gazette* of the name of every such apprentice and of the person to whom he shall have been apprenticed.

Maintenance and wages to be stipulated for on behalf of such destitute children when apprenticed.

8. Due provision for the maintenance, clothing, and instruction of every destitute child so apprenticed shall be made in every such contract of apprenticeship, and suitable wages shall also be therein stipulated for, whenever such Magistrate or other proper officer shall deem that the child's service in any part thereof will be worth wages; and in apprenticing every such child, either to a relative or stranger, it shall be the duty of such Magistrate or officer to make the best terms he can for such child.

Form of contract in apprenticing destitute children.

9. All such contracts for the apprenticeship of destitute children as aforesaid shall be drawn up as near as possible in the following terms:—

District of ———.

This contract of apprenticeship of A. B. (here insert the designation of A. B. as accurately as possible), a destitute child, witnesseth that C. D. (here describe C. D. as the Resident Magistrate, or as the officer specially appointed by the Governor to attest such contracts of apprenticeship for the district, as the case may be), pursuant to the Act No.— in that case made and provided, does by these presents apprentice the said

A. B., aged _____ years or thereabouts, to E. F. (here insert the designation of E. F. as accurately as possible), with him to dwell and serve as an apprentice until (or for, as the case may be—here insert the age at which the apprenticeship is to determine, or the term for which it is to endure), during all which time the said apprentice shall faithfully and honestly serve and obey his master; and the said E. F., for himself, his heirs, and executors, does hereby covenant and agree with the said C. D., for and on behalf of the said A. B., that he, the said E. F., shall teach and instruct, or cause to be taught and instructed, the said A. B. in the (here insert the particular trade or occupation), in the best manner that he can, during the said term, and shall also duly provide, or cause due provision to be made, for the education and religious instruction of the said A. B. to the best of his ability, and shall, during the said term, provide the said apprentice with suitable and sufficient food, washing, lodging, and all other things necessary and fit for such apprentice, and shall also pay, as wages, to the said apprentice, the sum of (here insert the terms at which the wages stipulated are to be payable); and also, the said E. F. shall not assign or transfer the said apprentice to any other person during the said term, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer having power and authority to give such consent.

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In witness whereof, we, the said C. D. and E. F., have set our hands at — on this the — day of 18—.

(Here insert the signatures or marks of the parties).

In presence of (here shall be inserted the signatures of at least two witnesses, who have witnessed the execution of the contract).

10. In case the Magistrate or other proper officer by whom the contract for the apprenticeship of any such destitute child as aforesaid shall have been entered into as aforesaid shall, by death or otherwise, cease to act as such Magistrate or officer, then, and in that case, all the provisions and covenants in such contract of apprenticeship contained shall endure in favour of the successor of such Magistrate or officer, duly appointed, and such successor shall and may sue upon and take all other benefit and advantage whatsoever of such provisions and covenants, in like manner as if such successor had been himself the person by whom such contract as aforesaid was originally made.

Covenants in such contracts to endure to successor in office of the Magistrate in whose favour they are made.

11. Every such last-mentioned contract of apprenticeship shall be made and signed as aforesaid in three parts, one of which parts shall be given to the master, and one to the apprentice, and the third shall be filed and registered in the office of the Magistrate by whom it is attested; or, where it shall have been attested by any other officer specially appointed as aforesaid, an entry of it shall be made in a book to be kept by him for that purpose, and the said third part shall be transmitted by him to the Magistrate of the district in which the master by whom such contract has been made usually resides, to be filed and registered in his office.

Such contracts of apprenticeship shall be in three parts,—one to be given to the master, one to the apprentice, and the third to be filed in the office of the Magistrate.

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12. No master shall or may assign or transfer any apprentice, having been apprenticed as aforesaid by any Magistrate or other proper officer as aforesaid, to any other person, without the consent, in writing, first had and obtained, of the Magistrate or other proper officer of the district in which such master resides; and in case such apprentice shall be of the age of sixteen years, or upwards, without the consent of such apprentice himself.

Apprentice not to be assigned without consent of Magistrate, or when apprentice shall be sixteen years, without his own consent.

CHAPTER IV.

RESPECTING THE EFFECTS OF THE DEATH, INSOLVENCY, AND CHANGE OF RESIDENCE OF THE MASTER; AND OTHER CIRCUMSTANCES DISSOLVING CONTRACTS OF SERVICE WITHOUT NOTICE.

Effect of death or insolvency of master upon the contract of service.

1. In the event of the death or insolvency⁽¹⁾ of the master, the contract of service shall, except as hereafter excepted, cease and determine after one month from the date of such death or insolvency, in case the stipulated term of service shall not sooner expire; and up to the period of such determination of such contract, such servant shall be entitled to claim his full wages and every other remuneration specified in such contract, and shall be bound, if required, to perform his service for the person legally representing the deceased or insolvent master.

Effect of death or insolvency of master upon the contract of apprenticeship.

2. In the event of the death or insolvency of the master of any apprentice, or in the event of the apprentice being prevented, in the manner hereinafter in the sixth section of this chapter particularly mentioned, from performing his service or fulfilling his engagement at the place where the same ought to be performed or fulfilled, such death, insolvency or prevention shall be a complete discharge of the contract of apprenticeship, and if any sum shall have been really and *bond fide* paid by or on behalf of such apprentice as aforesaid, it shall be lawful for any Magistrate having jurisdiction, or other competent Court, upon proof of such payment, to order, in a summary manner, any sum which to the said Magistrate or Court shall seem reasonable to be paid to or for the use of such apprentice as aforesaid, by any such master as aforesaid, or his legal representative; regard being had, however, in estimating such sum, to the amount of the sum originally paid by or on behalf of such apprentice, and to the time during which, such apprentice continued in the service of such master as aforesaid; Provided always, that every such apprentice shall be entitled to his full wages, or other remuneration, which may have become due previous to such dissolution of the contract of apprenticeship.

Effect of death or insolvency of master where apprentice is under or of the age of 16.

3. In the event of the death or insolvency of the master of any child, who having been in a state of destitution, shall have been apprenticed by a Magistrate or other proper officer in the manner hereinbefore set forth, it shall be the duty of such Magistrate or other proper officer, in case such apprentice shall, at the time of the death or insolvency of his former master, be under the age of sixteen years, and unable to support himself, to retake the charge and care of such child; and if it shall be deemed expedient, to apprentice again the said child for any term within the limits prescribed by this Bill for the duration of apprenticeship to such fit and proper person as such

(1) Clark v. Denny, 4 E.D.C. 300.

magistrate or other proper officer and such child, if of the age of sixteen years or upwards, shall mutually approve of and agree upon; Provided that when such child has not attained the said age of sixteen years, his consent shall not be necessary in any case. No. 15, 1856.

4. The wife of the deceased master of every servant or apprentice hired or contracted to perform service as a domestic or agricultural servant, is entitled, if she shall so think fit, to claim the service of such servant or apprentice during the full period of the stipulated term of service, provided she shall consent to perform, and shall perform all the stipulations of the contract in favour of the servant or apprentice which the master was bound to perform. Widow of deceased master may adopt the contract of service.

5. In the event of a servant or apprentice dying during the currency of the stipulated term of service, his heirs, executors, or other legal representatives, are entitled to claim from the master the full wages and other remuneration due to such servant or apprentice for the period which he had served previously to his death and no more. On death of servant or apprentice, wages to be paid up to period of death.

6. No servant or apprentice (save as hereafter provided as to persons apprenticed as destitute children), hired or contracted to perform service at the residence of, or at any particular place of trade or business occupied by his master, is, in the event of his master's removing his residence, or place of trade or business, out of the town, or (where such place is not in any town) from the place in which by the contract such servant or apprentice was bound to perform his service, to any greater distance than two miles from such town or place where, by the stipulations of the contract, such servant or apprentice is not bound to reside in the house or on the premises of his master, or out of the district of such town or place where such servant or apprentice is bound to reside in the house or on the premises of his master,—bound to perform his service at the place to which his master shall have removed his residence or place of trade or business, without the consent of such servant, or of the parents or guardians of such apprentice;—but such consent shall in all cases be deemed and taken to have been given whenever it shall be proved that such servant, or apprentice, being one not bound to reside in the house or on the premises of his master, has performed, or in the case of an apprentice, been knowingly permitted and allowed by his parent or guardian to perform, at the new residence or place of trade or business of his master, any service to his master of any kind which he was bound by the contract to perform,—or being one bound to reside in his master's house or premises, has gone to and remained, and in the case of an apprentice, been permitted and allowed by his parent or guardian to go to and remain in such house or on such premises, for one week after his master's removal thereto. Effect of change of residence of master upon the contract of service or apprenticeship.

7. The master of any apprentice who has been apprenticed to him in a manner hereinbefore provided as a destitute child is entitled, without limitation or restraint, to remove such apprentice to and to exact the performance of the service stipulated in the contract wherever such master may have removed his residence or place of trade or business within this Colony, upon giving notice of his intention so to do before his departure to the Magistrate of the district which he is going to leave, and the Magistrate, upon receiving such notice, shall endorse the same on the third part of the contract of apprenticeship registered and filed by him; and on such removal The master of an apprentice, who shall have been a destitute child, may remove such apprentice, with permission of Magistrate.

No. 15, 1883.

Certain servants and apprentices bound to make certain journeys, if required.

taking place, forthwith transmit such third part to the Magistrate of the district to which such an apprentice shall be removed, to be by him duly registered and filed in manner hereinbefore provided.

8. No servant or apprentice, hired or contracted to perform domestic service, may lawfully refuse to accompany his master, or any of his family, by desire of his master, on any journey within this Colony, or in the course of such journey to perform every such service as, by reason of his contract of service or apprenticeship, he would be bound to perform in his master's house or on his premises; and no servant or apprentice may lawfully refuse to go on any journey within this Colony on which his master shall order him to go, or in charge of, or to drive, herd, tend, or to take care of any carriage, horse, or any kind of cattle, the property or in the lawful possession of or under the lawful control of his master, which such servant or apprentice would, by reason of his contract of service or apprenticeship, be bound to ride, drive, herd, tend or take care of, or charge of, at his master's residence or on his premises: Provided, always, that there shall be reasonable ground for believing that such journey may and will be performed before the expiration of the stipulated term of the service of such servant or apprentice; and that such master shall be bound to provide such servant or apprentice with food and every other thing which may be necessary and proper to enable such servant or apprentice to perform such journey, and to return to the residence or premises of his master before the expiration of the term of service.

No servant or apprentice shall be bound to accompany his master or go out of the Colony without special agreement or consent.

9. No servant or apprentice shall be bound to accompany his master or to go out of this Colony, without the special agreement or consent of such servant, or of the parent or guardian of such apprentice, or when such apprentice is of the full age of sixteen years, without, also, the consent of such apprentice.

Where servant not bound to accompany his master to new residence, contract dissolved by master's removal.

10. When any servant not being bound or obliged to accompany his master, or go to any place to which the master shall remove his residence or place of trade or business, or to which the master shall order such servant to go, shall decline or refuse so to do, the contract of service shall, from the date on which the servant shall be prevented from performing his stipulated service at the place where the same was to have been performed, stand dissolved, and such servant shall be entitled to claim from the master such wages or other remuneration, at the rate specified in the contract of service, as shall have been earned up to the time of the refusal beforementioned, together with wages and remuneration after the rate aforesaid for the period of one month additional, or until the expiration of the contract of service, in case it shall expire within one month from the time of such refusal: Provided, always, that when notice of his intention to remove as aforesaid, or to send such servant as aforesaid, shall have been given by such master, such additional wages and remuneration shall not in any case be due or payable for any period longer than one month from the date of such notice.

Any special agreement touching change of residence to be good.

11. Nothing herein contained shall annul or affect any special agreement or stipulation, made in any contract of service or apprenticeship, whereby the servant or apprentice shall be bound to accompany his master, or to go to any place, to which the master shall remove his residence or place of trade or business, or order such servant or apprentice to go and there perform the service stipulated in such contract.

12. When any female servant or apprentice shall be lawfully married during the currency of her stipulated term of service, her husband may at any time subsequent to such marriage dissolve the contract or service or apprenticeship, and remove his wife from her master's service if he shall think fit so to do, and shall be entitled to claim the wages and other remuneration which may have become due to her, for services previously to such removal, but shall be liable to her master for all damage which her master may sustain by such removal. But such damages shall in no case exceed the amount of the wages which she would have earned between the time of her marriage, and the time of the expiration of her service, had she continued in such service until such expiration.

No. 15, 1856.

Effect of marriage of female servant or apprentice, as to right of husband.

13. The master of any female servant or apprentice, who during the currency of her stipulated term of service, shall marry or enter into any state which in this Colony is or shall be reputed to be the marriage state shall, where such servant or apprentice is, by her contract of service or apprenticeship, bound to reside or to perform domestic service in the house or on the premises of her master, be entitled, at any time subsequent to such marriage or reputed marriage, to dissolve such contract and dismiss such servant or apprentice, and when such servant or apprentice is not by such contract bound to reside or to perform domestic service, in the house or the premises of her master, he shall be entitled to dissolve such contract, and dismiss such servant or apprentice from his service, whenever she shall by reason of her pregnancy or delivery of a child, become disabled from performing the service which, by such contract she is bound to perform; but any such servant or apprentice so dismissed on account of her marriage, or entering into a state so reputed as aforesaid to be the marriage state, or of pregnancy or delivery of child, shall be entitled to claim from her master the wages and every other remuneration which shall have become due to her for her services previously to the date of such dismissal; and the master, before being entitled to dismiss such servant or apprentice, shall be bound to pay and satisfy the same.

Effect of marriage or pregnancy of female servant or apprentice, as to the rights of master.

CHAPTER V.

OF THE JURISDICTION OF THE RESIDENT MAGISTRATES IN CASES BETWEEN MASTERS AND SERVANTS AND APPRENTICES.

1. The Resident Magistrates within the Colony have jurisdiction in all cases arising in their respective districts between masters and their servants and apprentices, and with reference to their relative rights and duties, or to any matter or thing, or offence, as to which provision is made by this bill.

Jurisdiction of Resident Magistrates in cases between masters and their servants and apprentices.

2. Every Resident Magistrate has jurisdiction in any such case as aforesaid, brought before him against any person being at the time within his district, whether the grounds of such case arose within the district or not, or whether the person against whom the case is brought has his usual residence or place of abode in that district or not; but the Magistrate shall, whenever it shall appear to him that any such case can be more conveniently tried or determined by the Resident Magistrate of any other district, dismiss such case, and, in the event of his doing so, when the servant or apprentice is accused of desertion, and when he shall have probable cause shown

Resident Magistrates have jurisdiction over all persons within their respective districts.

No. 15, 1856.

to him, by oath or affidavit, of any credible person, for believing this to be the fact, such Magistrate may, if he think fit, issue a warrant for the conveyance, under sure custody, of such servant or apprentice to the town or place where the court of such other Magistrate is held; Provided the master shall undertake to pay the expense of such conveyance, and the Magistrate by whom the cause shall be ultimately tried and decided shall adjudge by which of the parties the said expenses shall be paid.

3. [§§ 3-9 repealed by § 21 of Act 18 of 1873.]

Definition of punishment for servant refusing to resume his service after undergoing imprisonment.

10. If any servant or apprentice, whose contract of service or apprenticeship still subsists, shall, upon being discharged from prison after undergoing imprisonment under this Act, refuse or neglect, upon his master's request, to resume his service under his contract, he shall be liable to be imprisoned with or without hard labour for any period not exceeding one month, and so on for successive periods, not any of them exceeding one month, until he shall consent to resume, and shall resume, his service under his contract; and every such period of imprisonment, or so much thereof as the Convicting Magistrate shall adjudge, may be with solitary confinement or with or without spare diet, or spare diet with or without solitary confinement: Provided, however, that no servant or apprentice shall, under this Act be imprisoned continuously, and without any intermediate resumption of service, under his contract, for longer than six months in all.

Period of imprisonment of servant to be added to the term of service stipulated in the contract.

11. When any period of imprisonment shall be undergone by any servant or apprentice for any offence under this Act, a like period shall be added to the term of service stipulated for in the contract of service or apprenticeship, as it subsisted when such imprisonment was commenced, so that such servant or apprentice shall be obliged to serve a further period equal to the period of his imprisonment, in addition to the term of service originally stipulated.

Period during which any servant shall have absented himself from the service of his master to be added to the term of service originally stipulated.

12. (1) When the offence of which any servant or apprentice shall be convicted under this Act, shall be the offence of absenting himself from, or of departing from, the service of his master, then the period of his absence shall be added to the term of service originally stipulated, in like manner as in the last preceding section directed in regard to the period of imprisonment therein mentioned; and it shall be the duty of the magistrate convicting such servant or apprentice, to ascertain, at the trial, the period of absence, and to certify the same by some writing under his hand, to be delivered to the master, and the period mentioned in such writing shall, by all courts and in all places, be deemed to be added to the original term of service.

Compensation by servant for loss of or damage to property of master.

13. As often as any property of the master shall be lost or damaged by means of any act or omission of his servant or apprentice, which act or omission is by this Act declared to be an offence, it shall be lawful for the Magistrate, should he so think fit, and the master shall thereto agree, to ascertain whether such servant or apprentice is able to make compensation for such loss or damage, and if so, to fix the amount of such compensation, and make such order as to the payment thereof, either at once or by instalments out of wages to be yet earned, or otherwise, as shall seem reasonable and just, and in the meantime, and until default made in such payment, or in the payment of such some instalment, to defer passing sentence upon the party offending;

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but such Magistrate shall preserve on record the evidence in the case, and, upon application of the master, and proof given, upon oath, of some such default as aforesaid, shall issue his warrant for the apprehension of such servant or apprentice, and shall pronounce upon him such sentence as, regard being had to the circumstances of the original offence, and to the degree in which such servant or apprentice has made, or failed to make, the compensations ordered, shall appear equitable and just. ⁽¹⁾

14. As often as the master of any servant or apprentice, who shall be convicted of any offence under this Act, shall desire the cancellation of the contract of service or apprenticeship, the magistrate, should he so think fit, may order the cancellation of the same, and the same shall be cancelled accordingly; Provided that such cancellation shall not prevent the execution of any sentence which the Magistrate may pronounce or may have pronounced upon the offender for his offence.

Cancellation of contract for misconduct of servant.

15. As often as the master shall have caused any servant or apprentice to be brought before the Magistrate to answer any charge preferred against him by such master, and such master shall fail in obtaining the conviction of such servant or apprentice, then the Magistrate should he so think fit, may, at the desire of such servant or apprentice, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

Cancellation of contract on groundless accusation by the master.

16. [§§ 16-20 repealed by § 21 of Act 18 of 1873.]

21. ⁽²⁾ *The Magistrates of this Colony have jurisdiction in any civil case instituted by any servant or apprentice, to compel the delivery of any of his cattle, sheep, goats, or other animals, lawfully running or being upon his master's land, and which his master shall, either before or after the expiration of the contract of service or apprenticeship, upon demand made, and without lawful cause, have refused to deliver or permit to be taken away; and in case it shall be made to appear that the master had no reasonable and probable cause for believing that the animals in question were lawfully detained, the Magistrate shall, besides giving judgment for the delivery of such animals, and for costs, impose, at the same time, upon the master, a fine not exceeding one pound for every animal so unlawfully detained: Provided, however, that the total amount of the fine so payable shall not exceed the sum of five pounds altogether; such fine to be recoverable in like manner as the said costs, but when recovered, to be applied as by this Act directed, in regard to fines in criminal cases: Provided that neither the fact that the contract of service or apprenticeship of such servant or apprentice has not yet*

Actions by servants to compel delivery of property detained.

⁽¹⁾ Where upon a trial and conviction for theft of stock the owner of the stock applies for judgment against the prisoner, who was his servant, for the damage suffered, the proceedings should be taken under Act 16 of 1864, § 4, and not under the Masters and Servants Act, No. 15, 1856, section 13.

Where compensation is asked against a prisoner convicted of theft of stock, the value of the property stolen must be proved.—*Queen v. Jack*, 2 E.D.C. 388.

A servant convicted for breach of duty whereby his master's property is lost, cannot be sentenced to imprisonment and to pay the value of the property lost.—*Queen v. Whitbooy*, 2 E.D.C. 161.

If a servant has goods of his master in his possession, and by a subsequent contract, either by pledge or sale, the property is intended to be passed to the servant, there need not be an actual fresh delivery, per *De Villiers, C. J. O'Callaghan's Assignees v. Cavanagh*, 2 Juta 122.

⁽²⁾ This section is repealed by Act 18 of 1873, but is reprinted in view of the provisions of § 3 Act 14 of 1870 (Cattle Removal); see, however, § 15, Act 18 of 1873, *infra*.

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expired, nor the fact that money is due or alleged to be due by such servant or apprentice to the master, shall be deemed or taken to be, of itself, reasonable and probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

22. [§§ 22 & 23 repealed by § 21 of Act 18 of 1873.]

Contract may be cancelled if the master has wrongfully assaulted his servant or apprentice.

24. As often as any master shall be convicted of wrongfully and unlawfully assaulting his servant or apprentice, the convicting magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of the contract of service or apprenticeship, and the same shall be cancelled accordingly.

25. [§§ 25 & 26 repealed by § 21 of Act 18 of 1873.]

Detaining a child under 16 years of age.

27. If any child under the age of sixteen years shall be wrongfully detained by any person as a servant or inmate, the Resident Magistrate of the district in which it shall be so detained, shall have jurisdiction to order the restoration ⁽¹⁾ of such child to such of its parents as would, under this Act, be entitled to apprentice such child, if then about to be apprenticed: Provided, however, that should it be made to appear, upon the hearing of any such case, that the person complained against originally obtained the said child in a lawful manner, and when an infant under the age of five years, and that the parent claiming the same has so acted in reference to the said child, and to the person bringing it up, as to make it a breach of good faith on the part of such parent to seek to take it away, as he or she now seeks to do, and that from the character of the said parent, the purpose for which he or she appears to desire to obtain possession of the said child, or other circumstances, it will be for the manifest benefit of the said child, to remain with the person with whom it is residing, rather than to be delivered to the parent applying, then the Magistrate shall refuse to order the delivery of the said child, leaving it to the parent applying for the same to take such other proceedings, if any, as he or she may be advised; and such Magistrate may, in the meantime, authorise the person rearing up such child to retain possession thereof.

Attorney-General and the Clerks of the Peace to act for servants, respondent, in cases of appeal to Supreme or Circuit Court.

28. In any case between a master and his servant, or apprentice in which the Resident Magistrate shall have given judgment in favour of such servant or apprentice, and such master shall appeal from such judgment, or apply to have the same reviewed, it shall be the duty of the Attorney-General, in case such appeal or application shall be brought before the Supreme Court, and of the Clerk of the Peace for the district in which such judgment was made, in case such appeal or application shall be brought before the Circuit Court (provided the said Attorney-General or such Clerk of the Peace shall be called on so to do), to appear for and conduct the case of such servant or apprentice, free of all charge or expense whatever, and the judge of the Circuit Court is hereby empowered, upon the motion of any such Clerk of the Peace, to assign counsel to act gratuitously for such servant or apprentice whenever such judge shall be of opinion that it is fit and proper so to do.

(¹) *Shaw v. Shaw*, 4 J. 424.

CHAPTER VI.

No. 15, 1886.

RESPECTING CHARACTERS GIVEN BY MASTERS TO SERVANTS OR APPRENTICES.

1. No master is bound to give a character to any servant or apprentice, who is or has been in his service, or to assign any reason for refusing to give it.

No master is bound to give a character of a servant.

2. Every master who shall knowingly have given any false character to any servant or apprentice is liable to make compensation for any loss or damages which any third party, who, by reason of such character so given, has been induced to take such servant or apprentice into his service, has sustained by the misconduct of such servant or apprentice in any respect, or with reference to any matter to which such character so given was false.

Consequences of knowingly giving a false character.

3. Every person who for the purpose of giving a character to any servant or apprentice, or other person intending to offer himself to be hired as a servant, shall forge or counterfeit and utter any certificate of such servant's or apprentice's character, or shall falsely personate any other person, and as such, either personally or by writing, give any false, forged, or counterfeit character, or certificate of character, of any such servant, apprentice, or other person offering or intending to offer to hire himself as a servant; and every person who shall offer to hire as a servant, asserting or pretending that he has served in any service in which he has not actually served, or with a false, forged, or counterfeit certificate of character, or shall in any wise add to or alter, by effacing, or erasing, or inserting any word or date, in any certificate given to him by his present or any former master, or by any other person duly authorized by any such master to give the same, and shall use, or attempt to use, the same, as an inducement to hire him, shall, on conviction thereof, incur and be liable to a fine not exceeding fifty pounds, nor less than ten pounds, or to be imprisoned for any period not exceeding one year, nor less than one month, or to both such fine and imprisonment.

Penalties for counterfeit certificates of character and false representations.

CHAPTER VII.

RESPECTING THE CONSTRAINTS OF MASTERS, SERVANTS AND APPRENTICES.

1. Any person who shall by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force or endeavour to force any servant or apprentice to depart from his service or work, or to return his work to his master before the same shall be finished, or to prevent or endeavour to prevent any servant or other person, not being hired or employed, from hiring himself to, or accepting service or work from any person, or force or induce, or endeavour to force or induce, any such servant or apprentice, or other such person, to belong to any club or association, or to contribute to any common fund, or shall use or employ violence to the property of another, or threats or intimidation, or shall molest or in any way obstruct another on account of his not belonging to any particular club or association or not having contributed or having refused to contribute to any common fund or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders,

Definition and punishment of unlawful interference with servants or apprentices, in order to prevent them from entering into or completing contract of service or apprenticeship.

No. 15, 1856.

resolutions, and regulations, made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, business, work, or labour, or the management thereof; or who, by any such violence, threats, intimidation, molestation, or obstruction, shall force, or endeavour to force, any manufacturer, or person carrying on any trade, business, work, or labour, or engaged in agriculture, to make any alteration in his mode of regulating, managing, conducting, or carrying on the same, or to increase or limit the number of his apprentices or servants, shall on conviction thereof before any Resident Magistrate, or other competent court, be imprisoned with or without hard labour, for any period not exceeding three months.

Definition and protection of lawful acts and associations.

2. Provided always that nothing herein contained shall extend to subject to punishment any persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at that meeting, or any of them respectively, shall require or demand for his or their service or work, or shall pay his or their servants or apprentices for their service or work, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which rate of wages or prices the persons entering into such agreement, or any of them, shall require or demand for his or their service or work, or pay to his or their servants or apprentices for their service or work, or of fixing the number of hours of work which he or they will work, or will require his or their servants or apprentices to work in any manufacture, trade, business, labour, or agriculture, and that no such persons so meeting together, or entering into any such agreement as aforesaid, shall be liable to any penalty or prosecution for so doing.

No. 18—1873.] (1)

AN ACT

[June 26, 1873.

To Amend Act No. 15, 1856, intituled "An Act to Amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices."

Preamble.

WHEREAS it is expedient to amend the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices:" Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Fourth section of chapter 2 of Act 15 of 1856 repealed.—Written contract of service not valid for more than one year except on certain conditions.

1. (1) The fourth section of chapter 2 of Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," shall be and the same is hereby repealed; and from and after the promulgation of this Act no written contract of service entered into in this Colony shall be valid or binding for a longer period than one year from the date thereof, nor shall any contract for service in writing be valid or binding in any case on any servant, unless the service so contracted for shall be stipulated to commence within the period of one month from the date

(1) A prisoner cannot be convicted of a contravention of the Masters and Servants Law Amendment Act, 1873, alleged to have been committed beyond the jurisdiction of the Supreme Court of this Colony. *Queen v. Baartman Jakhals*, 3 E.D.C. 118.

of the contract, except the contract be signed with the name, or, in case of illiterate persons, with the mark, of the contracting parties, in the presence of a Magistrate, or other proper officer,⁽¹⁾ described in the second section of Act No. 15 of 1856, who shall satisfy himself by inquiry of the servant or apprentice that the contract was entered into by the parties voluntarily, and with a clear understanding of its meaning and effect, and shall then, and not till then, subscribe such written contract in attestation of that fact.

No. 18, 1873.

2. ⁽²⁾ Any servant or apprentice may be fined any sum not exceeding one pound sterling, and in default of payment of the same may be imprisoned, with or without hard labour, for any period not exceeding one month, in case he shall be convicted of any of the following acts or instances of misconduct, that is to say :

Definition of punishment for certain acts of misconduct committed by servants or apprentices.

1. If he shall, after having entered into a contract, fail or refuse, without lawful cause, to commence the service at the stipulated time.
2. If he shall, without leave or other lawful cause, absent ⁽³⁾ himself from his master's premises, or other place proper and appointed for the performance of his work.
3. If he shall, during working hours, unfit himself for the proper performance of his work by becoming or being intoxicated.
4. If he shall neglect to perform any work which it was his

⁽¹⁾ On appeal from a decision of the Resident Magistrate of Cape Town on a case in which the appellant was charged with having failed to perform a contract made by her in England to enter the service of the respondent in Cape Town as a cook, and with respect to which it was contended for the appellant that the contract was not executed in accordance with the terms of the Act. The objection was overruled, and the appellant was sentenced to pay a fine of £2, or to undergo a month's imprisonment.

It was contended for the appellant that the conviction was bad, because section 1 of Act No. 18 of 1873 provided that contracts of service in which it was not stipulated that the service was to commence within a month were not binding unless executed before a Magistrate or some officer specially appointed for that purpose, and that this section repealed section 1 of Act No. 15 of 1856. In this case the contract was made in Southampton, but it was not made before a Magistrate or other officer who held an appointment from the Government of the Colony.

The Chief Justice held that if there was any ambiguity in construing an Act of this kind, the Court must look at the whole Act, and at the enactments it was intended to modify. His opinion was that the Legislature, in framing the Act of 1873, intended it to apply to contracts entered into in the Colony, and that the proviso that certain contracts of service should be entered into before a Magistrate applied wholly to Magistrates in the Colony. It could never have been the intention of the Legislature that, when an employer had paid the passage of a servant to the Colony, the servant on arriving here should have the power of refusing to enter the service. He thought the Court ought not to disturb the finding of the Magistrate, and that the appeal ought to be dismissed. *Sayers v. Thorne*, Supreme Court. 7 J. 243.

⁽²⁾ Special J.P. has jurisdiction to try offences against this section. See § 22, Act 40, 1882 (Administration of Justice). See Act 30, 1889, *infra*.

Where a servant is accused of refusing to do his duty and desertion, he must be charged with contravening the appropriate sections of the statute which render these acts punishable offences.

A servant contravening sections 2 or 7 of the Act 18 of 1873 cannot on a first conviction be sentenced to imprisonment without the option of a fine. *Queen v. Police*, 2 E.D.C. 391; *Queen v. Jack*, 2, High Court 587.

Spare diet cannot be imposed in the case of a first conviction for contravention of section 2 of Act 18 of 1873. *Queen v. Elsie Oliphant*, 5 E.D.C. 330. See also *Pentz v. Solomon & Co.*, Foord 52.

⁽³⁾ *Njoli v. Stewart*, 1 E.D.C. 147. *Distin v. Williamson*, 1 E.D.C. 20.

No. 18, 1879.

duty to have performed, or if he shall carelessly or improperly perform any work which, from its nature, it was his duty, under his contract, to have performed carefully and properly.

5. If he shall, without leave and for his own purposes, make use of any horse, vehicle, or other property belonging to his master.
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey.
7. If he shall make any brawl or disturbance in or at his master's dwelling-house, on his master's farm, and after being, by his master or any other person placed by his master in authority over him, desired to desist, shall, notwithstanding, continue making such brawl or disturbance.
8. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

Definition of punishment under either the next ensuing section or the last preceding section in case of a second or further conviction.

3. ⁽¹⁾ In case of a second conviction under the last preceding section, or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding three pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding six weeks, and shall be liable during such imprisonment (or so much thereof as the Convicting Magistrate shall adjudge) to be kept in solitary confinement, with or without spare diet or on spare diet with or without solitary confinement, subject as hereafter is mentioned, and upon conviction under the next ensuing section of this Act followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment, as if both convictions have been had under the last preceding section.

Definition of punishment for acts of misconduct of a more serious nature committed by servants or apprentices.

4. ⁽¹⁾ Any servant or apprentice may be fined any sum not exceeding three pounds sterling and, in default of payment, may be imprisoned, with or without hard labour, for any period not exceeding two months, or may be imprisoned without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding two months, and during such imprisonment as in this section is mentioned, may be kept in solitary confinement with or without spare diet, or on spare diet with or without solitary confinement, subject as hereafter in the nineteenth section is mentioned, in case he shall be convicted in any of the following acts or instances of misconduct, that is to say :

1. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.

⁽¹⁾ See Act 30, 1889, § 2, *infra*.

No. 18, 1873.

2. If he shall by wilful breach of duty, ⁽¹⁾ or by neglect of duty, or through drunkenness, refuse or omit to do any lawful act proper and requisite to be done by him for preserving in safety any property placed by his master in his charge, or placed by any other person in his charge for delivery to or on account of his master.
3. If being employed as a herdsman he shall fail to report to his master the death or loss of any animals placed in his charge, which he shall allege to have died or been lost, on the earliest opportunity for so doing after he shall have discovered or in the course of duty was bound to have discovered, such death or loss, or if he shall fail to preserve for his master's use or inspection any part or parts of any such animal as he shall allege to have died, which part or parts he shall by his master have been directed to preserve, ⁽²⁾ unless such herdsman shall prove to the satisfaction of the court the death of such animals, or if it shall be made by his master to appear that any such animal or animals alleged by him to have strayed away or otherwise become irrecoverably lost, could not, under the circumstances of the case, have become irrecoverably lost without his act or default.
4. If, being employed in any capacity other than that of a herdsman, he shall allege the loss of any property placed in his charge by or for his master, and it shall be made by his master to appear that the property in question could not have been lost without his act or default.
5. [Repealed by § 4, Act 7, 1875.]
6. ⁽³⁾ If he shall, without lawful cause, depart from his master's service, with intent not to return thereto.

5. ⁽⁴⁾ In case of a second conviction under the last preceding section, or of more such convictions than a second, within the space of six months next after any former conviction, the offender may, in regard to such second or any further conviction, be fined any sum not exceeding five pounds sterling, and in default of payment thereof may be imprisoned and kept at hard labour for any period not exceeding three months, or may be imprisoned without the infliction of any fine, at the discretion of the Magistrate, with or without hard labour, for any period not exceeding three months, and shall be liable during such imprisonment as in this section is mentioned, or so much thereof as the Convicting Magistrate shall adjudge, to be kept in solitary confinement, with or without spare diet, or on spare diet, with or without solitary confinement, subject as hereafter mentioned; and upon a conviction under the second section of this Act, followed within six months by a conviction under the last preceding section, the offender shall be liable to the like punishment as if both convictions had been had under the last preceding section.

Definition of punishment under either the last preceding section or the second section in cases of a second or further conviction.

⁽¹⁾ A servant convicted under clause 2 of section 4 of Act No. 18 of 1873, of breach of duty whereby his master's property is lost, cannot be sentenced to imprisonment and to pay the value of the property lost. *Queen v. Whitbooy*, 2 E.D.O. 161.

⁽²⁾ 1 Jut., 409.

⁽³⁾ See § 2, Act 7, 1875, *infra*.

⁽⁴⁾ See Act 30, 1889, § 2, *infra*.

No. 18, 1873.

No fine or imprisonment shall have the effect of cancelling a contract.

Certain exception from the second to sixth section, inclusive, and the ninth section.—Provision for the punishment of servants and apprentices other than those engaged in agriculture or employed to work on farms.

6. (1) No fine paid or period of imprisonment undergone under this Act by a servant or apprentice shall have the effect of cancelling the contract of service or apprenticeship.

7. (2) Nothing in any of the preceding sections from second to sixth, both inclusive, nor in section nine, shall extend or apply to servants or apprentices under the age of sixteen years, or to servants or apprentices other than those engaged in agriculture or employed to work on farms: Provided, however, that any servant or apprentice other than those engaged in agriculture or employed to work on farms as last mentioned, not being under sixteen years of age, may:

1. If he shall, after having entered into a contract, fail or refuse without lawful cause to commence the service at the stipulated time:
2. If he shall, without leave or other lawful cause, absent himself from his master's premises, or other place proper and appointed for the performance of his work: (3)

(1) See Act 30, 1889, § 2, *infra*.

(2) See note to § 2. See also Act 30, 1889, *infra*.

(3) In the case of *Roper v. Argus Printing and Publishing Company* (7 Juta 3,) heard on appeal in the Supreme Court on the 12th of April, 1889, from a judgment of the Resident Magistrate of Cape Town, the summons set forth that appellant by absenting himself from service between the 26th March and the 1st April last had contravened the Masters and Servants Act. To this the appellant (the defendant in the court below), before pleading took exception, on the ground that a lithographic artist was not a servant within the meaning of the Act, and therefore could not be summoned under such Act. The exception was, however, overruled, and the Magistrate found the defendant guilty, and sentenced him to pay a fine of 10s. or a week's imprisonment in default. The whole case turned upon the question whether or not a lithographic artist was a servant or handicraftsman. Counsel's contention was that a lithographic artist like a reporter or an engraver was not a servant, but a man who had an art function, and not the function of a handicraftsman. It was quite open for Mr. Dormer to have taken action against his client in another manner, instead of exposing him to fine or imprisonment. Counsel having addressed the court on behalf of the respondent, urging that an artificer and a handicraftsman were in a very similar position,

The Chief Justice said, from the record it appeared that the respondent Dormer, in his capacity as managing director of the Argus Printing and Publishing Company, engaged the appellant, Roper, in London, as a general lithographic artist, for a term of three years. The agreement was made in writing, and specified that Roper was to perform all such duties as might be assigned to him in the general lithographic work of the establishment. When Roper arrived in the Colony, Roper ratified the agreement before the Magistrate and took up his duties. Having noticed something in the papers about an alteration in the constitution of the company, he absented himself from his work, and was warned by Dormer to appear before the Magistrate to answer a charge of having contravened paragraph 2 of section 7 of the Masters and Servants Act. He was found guilty and fined, with the alternative of imprisonment. The ordinary law regarding contracts between masters and servants did not give other than a civil remedy, but, owing to the circumstances of the country, the Parliament had decreed that certain offences by servants should be subjected to criminal penalties, when violations of contracts were proved. He must say that the arguments on both sides had been particularly interesting as well as able, and he had listened to them with a great deal of attention, but the conclusion he had come to after giving the matter careful consideration was that this was not a breach of contract which it was intended by Parliament should be punished criminally. It could not, in his opinion, be said that a person who came out from England, as a general lithographic artist, to perform the duties specified in his contract, was a servant under the definition of the Act. He did not think that Parliament intended the Act to apply to cases of this kind, but to the more general contracts between masters and servants, and he did not think that Roper in this case had rendered himself liable, for his breach of contract with Dormer, to be taken before the magistrate and punished criminally.

No. 18, 1878.

3. If he shall, during working hours, unfit himself for the proper performance of his work by becoming or being intoxicated :
4. If he shall neglect to perform any work which it was his duty to have performed, or if he shall carelessly or improperly perform any work which from its nature it was his duty, under his contract, to have performed carefully and properly :
5. If he shall, without leave or for his own purposes, make use of any horse, vehicle, or other property belonging to his master :
6. If he shall refuse to obey any command of his master, or of any person lawfully placed by his master in authority over him, which command it was his duty to obey :
7. If he shall by wilful breach of duty, or by neglect of duty, or through drunkenness, do any act tending to the immediate loss, damage, or serious risk of any property placed by his master in his charge or placed by any other person in his charge for delivery to or on account of his master :
8. If he shall by wilful breach of duty, or by neglect of duty or through drunkenness refuse or omit to do any lawful act proper and requisite to be done by him for forwarding in safety any property placed by his master in his charge for delivery to or on account of his master :
9. (1) If he shall use any abusive or insulting language to his master, to or his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace :

be fined any sum not exceeding two pounds, and in default of payment be sentenced to be imprisoned for any period not exceeding one month ; but if it shall appear that such servant or apprentice is able to pay the damage caused by such act or default as in this section aforesaid, it shall be competent for the Magistrate, whether the master shall agree thereto or not, to proceed under section thirteen, chapter five, of Act No. 15, 1856.

8. No servant or apprentice shall be convicted under any of the foregoing sections of this Act unless the master shall lodge his complaint within one month next after the day on which he became cognizant of the offence or alleged offence.

Complaints under foregoing sections to be lodged within one month.

9. (2) In order to save time and expense, the master of any servant or apprentice alleging matter of complaint against such servant or apprentice may warn and order such servant or apprentice to appear before the Magistrate of the district, on some day and hour to be named by such master, there to answer some certain charge, of the nature of which such complainant shall inform such defendant ; and should the defendant fail to attend, in pursuance of such warning, the magistrate, upon the application of the complainant, and upon proof by affidavit that such defendant received such warning, and received

Servant to appear before a magistrate on order of master, and failing to appear to be liable to expenses on conviction.

On this sole ground he held that the appellant was not a servant within the meaning of the Masters and Servants Act. The appeal must therefore be allowed with costs, and the conviction quashed. Roper was in the enjoyment of a very substantial salary, and Dormer was not without his legal remedy.

(1) 9th paragraph added by Act 7 of 1875, *infra*.

(2) See Act 30, 1889 §§ 2 and 3, *infra* (master may require servant to appear before Special J.P.)

No. 18, 1873.

the same a reasonable time before the time fixed for his appearance, and that to the best of the deponent's knowledge and belief, such defendant has no lawful cause for not appearing, may issue his warrant for the apprehension of such defendant, in order to the trial of the complaint; and on such trial, and if the servant or apprentice shall be convicted of the offence with which he shall be charged, the Magistrate may (if he shall be satisfied that the defendant had no good and sufficient cause for failing to attend), in addition to the punishment to which the defendant may be sentenced, adjudge the said defendant to pay to his master such reasonable costs and expenses, not being more than those allowed in criminal cases, to which his master may have been put in consequence of the defendant having failed to attend as aforesaid: Provided, always, that on issuing such warrant as aforesaid, the defendant shall be warned by summons to answer the charges brought against him, and to show cause why he shall not be adjudged to pay such expenses as aforesaid in consequence of his default in attendance.

Master having warned and ordered his servant to appear before a magistrate, upon failing to appear himself to be liable to expenses, and to penalties on failure to pay them.

10. Should any complainant who shall have warned any such defendant as aforesaid to appear as aforesaid himself fail to appear at the time fixed by him for the appearance of such defendant then and there to prosecute his complaint, the Magistrate, upon proof by affidavit that such defendant was warned by such complainant to appear at the said time to answer a charge of a certain nature, shall, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain the distance which such defendant shall have travelled, and the distance which any person or persons shall have travelled whom such defendant shall have brought with him as witnesses, and shall, upon being satisfied that such witnesses would or might have been necessary for his defence, make an order in writing against such complainant for the payment of the expenses of such defendant and his witnesses, if any, at and after the same rate as if each of the said persons had been a witness summoned at the instance of the Public Prosecutor, and attending to give evidence in the Court of such Magistrate upon a criminal case; and if such complainant shall, upon presentation to him of such order by the person or persons in whose favour the same shall have been made, refuse or neglect to comply therewith, he shall incur and be liable to a fine not exceeding five pounds sterling, and in default of payment of the same to imprisonment, with or without hard labour, for any period not exceeding one month: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or separate orders may be delivered to one or more of such persons, as may be most convenient.

Servant or apprentice having complained against his master, failing to appear at time fixed to be liable to expenses, and to penalties on failure to pay them.

11. Should any servant or apprentice who shall have complained against his master for or on account of any offence against any of the provisions of this Act fail to appear at the time fixed by the Magistrate for the appearance of the defendant, then and there to prosecute his complaint, the Magistrate may, unless satisfied that such complainant had a good and sufficient reason for failing to appear at such time, ascertain in the manner in the last preceding section mentioned the expenses and costs which the defendant has reasonably incurred in appearing to answer such complaint, and he shall in the manner in the last preceding section mentioned order the payment by

the complainant of such costs and expenses; and if, on the presentation to him of the order therein mentioned by the person in whose favour it is made, such complainant shall refuse or neglect to comply therewith, he shall incur and be liable to the same fine, and in default of payment thereof to the same punishment, as is fixed in the last preceding section: Provided that one such order may include the expenses of all or any of the persons whose expenses are to be paid, or separate orders may be delivered to one or more of such persons, as may be most convenient.

12. No servant or apprentice who shall leave the place of his service for the purpose merely of lodging any complaint which he may have against his master, after leave for that purpose shall have been unreasonably refused, shall by reason only of his so leaving be deemed to have deserted his master's service, or to have in any wise contravened this Act.

Servant or apprentice may leave his place of service to lodge complaint.

13. A servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the second section of this Act, should the proof given in the case show that he is guilty of contravening not the second but the fourth section of this Act, may be convicted and sentenced according to the evidence; and, in like manner, a servant or apprentice summoned to answer for an offence alleged in the summons to be in contravention of the fourth section aforesaid, should the proof given show that he is guilty of contravening not the fourth but the said second section, may be convicted and sentenced according to the evidence: Provided, however, that the punishment to be awarded upon a conviction in either of these cases shall not exceed the punishment provided by the said second section: Provided, also, that the servant or apprentice shall have had in every case sufficient notice of the nature of the charge which he was called upon to answer.

Servant or apprentice summoned under the second section may be found guilty under the fourth section and vice versa.

14. (1) As often as the master of any servant or apprentice shall be convicted of the offence of withholding the wages of such servant or apprentice without reasonable and probable cause for believing that the wages so withheld were not really due, he shall be fined any sum not exceeding five pounds sterling, and in default of payment shall be imprisoned, for any period not exceeding one month; and the Convicting Magistrate shall, besides passing the said sentence, give judgment for the amount of the wages so wrongfully withheld, and for the costs of the proceedings, which costs shall be the same as in a civil case before the said court; and the said wages and costs shall, if not paid, be levied of the movable property of the master, under and by virtue of a warrant under the hand of the said Magistrate, together with the cost of such levy: Provided, however, that when and as often as the Magistrate shall acquit the master of the aforesaid offence, but shall yet find that wages are due by such master to such servant or apprentice which have been retained by such master, it shall be lawful for such Magistrate, and he is hereby required, forthwith to give judgment for the amount of wages which he shall find to be due to such servant, and make such order as to the payment of costs, should he award any, by the master, as shall seem to such Magistrate to be in accordance with real and substantial justice.

Definition of punishment for withholding wages by master. Judgment may be given for wages alone with or without costs.

(1). See note (1) to § 2, Act 15, 1856, *supra*, *Baker v. Dormer*, 1 Juta 253.

No. 18, 1878.

Definition of punishment for refusing to deliver servant's property. Penalty for default of payment of fine.

15. ⁽¹⁾ As often as the master of any servant or apprentice shall be convicted of the offence of having, either before or after the expiration of the contract of service of apprenticeship, upon demand made and without lawful cause, refused to deliver or permit to be taken away any of such servant's or apprentice's cattle, sheep, goats, or other animals, lawfully remaining or being upon such master's land without reasonable and probable cause for believing that the animals in question were lawfully detained, such master shall be fined any sum not exceeding one pound sterling for every animal so unlawfully detained; provided, however, that the total amount of a fine so payable shall not exceed the sum of five pounds sterling altogether; and in default of payment, shall be imprisoned for any period not exceeding one month; and the Convicting Magistrate shall, besides passing the said sentence, give judgment for the delivery of the said animals, and for costs, as in a civil action before the said Court, which costs, if not paid, shall be levied in the same manner as in the fourteenth section directed; but the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired shall not be deemed or taken to be of itself reasonable or probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of a lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

Definition of punishment for master failing to supply articles stipulated for in contract.

16. As often as the master of any servant or apprentice shall be convicted of the offence of failing, upon demand, to supply or deliver to such servant or apprentice the food, bedding, or other articles stipulated for in any written contract of service or apprenticeship, or of supplying or delivering food, bedding, or other articles not conformable to the said contract, he shall be liable to be fined any sum not exceeding five pounds sterling, and in default of payment to imprisonment for any period not exceeding one month.

Contract may be cancelled if the master has not faithfully performed his part thereof.

17. As often as it shall be made to appear to the Magistrate, in any case instituted by any servant or apprentice against his master, that the master has not fairly and faithfully performed his part of the contract of service or apprenticeship, the Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of such contract of service or apprenticeship, and the same shall be cancelled accordingly.

Costs for compelling parties accused under this Act, and their witnesses, to attend the magistrate's court to be paid at the public charge under certain exceptions. Penalties for bringing charge without reasonable cause.

18. As often as any master shall complain against his servant or apprentice, or any servant or apprentice shall complain against his master, for or on account of any offence against the provisions of this Act, the process of the court of the Resident Magistrate for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that if at the trial the charge shall appear to have been brought without reasonable or probable cause, the party complaining shall be liable to a fine not exceeding five pounds, and also to defray the costs of process and of the witnesses in the case; and in default of payment of such fine and costs, shall be liable to be imprisoned for any period not exceeding one month: Provided, also, that such fine may be imposed upon the

(¹). See also Act 14, 1870 (Cattle Removal).

occasion of such trial, and without any fresh action or proceeding for the recovery thereof. No. 7, 1875.

19. In regard to the infliction of spare diet and solitary confinement under this Act, the Resident Magistrate shall observe and conform to such regulations and restrictions as shall have been or shall from time to time be issued by the Governor under the Act No. 20 of 1856. Regulations as to spare diet and solitary confinement.

20. All fines under this Act shall, when recovered, be paid into the Public Treasury. Fines to be paid into Treasury.

21. Sections 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 of the fifth chapter, and so much of any other portion of Act No. 15 of 1856, as is inconsistent with or repugnant to any of the provisions of this Act, shall be and the same are hereby repealed. Certain sections of Act 15 of 1856 repealed.

22. This Act may be cited for all purposes as the "Masters and Servants Law Amendment Act, 1873." Short title.

No. 28, 1874.] ACT [July 31, 1874.]
To Amalgamate the Laws relating to Masters, Servants, and Apprentices.

Whereas in several parts of the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," reference is made to other parts of the said Act, and whereas many of these references have become inapplicable by reason of the repeal of the said Act by the "Masters and Servants Law Amendment Act, 1873," and it is desirable that the said two Acts should be read together: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:— Preamble.

1. The said "Masters and Servants Law Amendment Act, 1873," shall be construed with and as part of the said Act No. 15 of 1856. Act No. 18 of 1873 to be construed with Act No. 15 of 1856.

2. This Act may be cited for all purposes as the "Masters and Servants Law Amalgamation Act, 1874," and the said Act No. 15 of 1856 may for all purposes be cited as the "Masters and Servants Law Act, 1856." Short title.

No. 7, 1875.] ACT [June 30, 1875.]
To Amend the Law Relating to Masters, Servants, and Apprentices.

Whereas it is expedient to amend the law relating to Masters, Servants, and Apprentices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:— Preamble.

1. (1) If the master of any servant or apprentice alleging matter of complaint against such servant or apprentice for any offence punishable under the "Masters and Servants Law Act, 1856," or the "Masters and Servants Law Amendment Act, 1873," shall make deposition on oath before a Resident Magistrate, or Justice of the Peace, that he believes (stating the grounds of his belief) that in order to secure the appearance of such servant or apprentice before the Resident Magistrate having jurisdiction to try the case, that the apprehension of such servant or apprentice is necessary, it shall be lawful for such Resident Magistrate or Justice of the Peace to issue his Servant or apprentice may be apprehended summarily on deposition of master.—Penalty for malicious depositions.

(1) See Act 30, 1889, § 3, *infra* (master may require servant to appear before Special J.P.)

No. 7, 1875.

warrant for the apprehension of such servant or apprentice without any previous warning or summons: Provided, however, that if the master of any servant or apprentice shall make such deposition maliciously and without reasonable and probable ground for believing the same to be true, such master shall be liable to be fined any sum not exceeding five pounds, and in default of payment thereof to be imprisoned for any period not exceeding one month.

May be apprehended summarily for desertion.

2. If any servant or apprentice is charged under either of the aforesaid Acts with having, without lawful cause, departed from his master's service with intent not to return thereto, it shall be lawful for any Resident Magistrate or Justice of the Peace to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons.

Punishment for abusive language.

3. (1) There shall be considered as inserted in the seventh section of the said "Masters and Servants Law Amendment Act, 1873," after the paragraph of the said section numbered eight, the following as a ninth paragraph:

9. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

Paragraph 5, section 4, Act 18, 1873, repealed.

4. The paragraph numbered five of the fourth section of the said last-mentioned Act is hereby repealed.

Accused competent to give evidence.

5. On the trial of any case in any Court of Resident Magistrate wherein any master, servant, or apprentice is charged with having contravened any of the provisions of the said Masters and Servants Acts, such master, servant, or apprentice, as the case may be, and his or her wife or husband, shall be competent, but not compellable, to give evidence on his or her own behalf, or on the behalf of the complainant in the said case.

Accused not compellable to enter the dock, but may be detained in custody.

6. No master, servant, or apprentice charged with having contravened any of the provisions of the said Masters and Servants Acts, and who is not immediately before the hearing of such charge in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the Court, or shall be otherwise treated as under arrest, during the hearing of such charge: Provided that if, in the opinion of the Magistrate before whom the charge is heard it shall be necessary, in order to secure the attendance of such master, servant, or apprentice, that he should be placed in custody, it shall be lawful for such Magistrate to cause such person to be arrested and detained in custody.

Officer in charge of any public work may prosecute.

7. In case it may be necessary to prosecute or proceed against any person employed on any of the public works of this Colony for contravening any of the provisions of the said Masters and Servants Acts, such prosecution or proceeding may be carried on by and in the name of any of the officers in charge of the work upon which such servant is employed at the time of such contravention.

Short title.

8. This Act may be cited for all purposes as the "Masters and Servants Act, 1875," and shall be construed as one with the Masters and Servants Acts, 1856, and the Act of 1873, amending the same; and the said Acts, the Masters and Servants Law Amalgamation Act, 1874, and this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1875."

(1) *Vide Act 30, 1889, infra.*

No. 30, 1889.]

ACT

[August 13, 1889. No. 30, 1889.]

To amend the Law relating to Masters, Servants, and Apprentices.

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

1. Every Special Justice of the Peace shall, within the local limits by law fixed and determined for his jurisdiction, have and be entitled to exercise over and in respect of any person with regard to any offence wherewith such person shall be charged against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, the same jurisdiction, power and authority, as if he were a Resident Magistrate; provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender, subject to the provisions of the said Acts, in any higher or more severe manner than by fine, not exceeding two pounds, or by imprisonment, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding one month: Provided, further, that the provisions of the third to the eleventh sections inclusive, and of the thirteenth section of the Act No. 10 of 1876 ⁽¹⁾ shall *mutatis mutandis* apply to regulate, limit, and define the jurisdiction of and the procedure to be adopted by every Special Justice of the Peace under the authority of this section.

Special J.P.'s jurisdiction extended to all offences against Masters and Servants Acts.

2. Notwithstanding anything to the contrary contained in the seventh section of the Act No. 18 of 1873 ⁽²⁾, as amended by the third section of the Act No. 7 of 1875 ⁽³⁾, the provisions of the second to the sixth sections inclusive and the ninth sections respectively of the said Act No. 18, 1873 (as the last-mentioned section is amended by this Act) shall extend and apply to any man-servant employed as a domestic servant or to perform any bodily labour in manufactures, or as a boatman, porter, groom, stablekeeper, gardener, or other occupation of a like nature.

Offender against section 7 of Act 18, 1873, may be imprisoned without option of fine.

3. Notwithstanding anything to the contrary contained in the ninth section of the Act No. 18 of 1873, or in the first section of the Act No. 7 of 1875, it shall be lawful for the master of any servant or apprentice, if he shall have reasonable and probable cause to suspect such servant or apprentice of having committed any offence against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, to order and require such servant or apprentice forthwith to proceed in his, the said master's company before the nearest Resident Magistrate or Special Justice of the Peace having jurisdiction in the district or place where such master so suspects that such offence has been committed there to answer a charge of having committed such offence; and any servant or apprentice who shall neglect or refuse to obey any such order made by his master, having such reasonable and probable cause of suspicion as aforesaid, shall be liable to be arrested by his master, without warrant, and conveyed in custody before such Resident Magistrate or Special Justice of the Peace as aforesaid, to be by him dealt with

Servant or apprentice reasonably suspected of offence against Masters and Servants Acts must accompany master before Magistrate; if he refuses is liable to arrest.

(1) Vide p. 102, *supra*.

(2) Vide *supra*.

(3) Vide *supra*.

No. 35, 1886.

according to law; provided that no servant or apprentice shall be bound or obliged to obey such order as aforesaid, unless or until he shall be informed of the nature of the charge which his master intends to prefer against him.

Effect and
short title of
Act.

4. This Act may be cited for all purposes as the "Masters and Servants Act, 1889," and shall be construed as one with the "Masters and Servants Acts, 1856 to 1875," which, with this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1889."

No. 35, 1886.]

ACT

[July 6, 1886.

To Extend and Regulate the Liability of Employers to make Compensation for personal injuries Suffered by Workmen in their Service.

reamble.

WHEREAS the law relating to the liability of employers to make compensation for injuries suffered by workmen in their service is at present vague and uncertain, and it is desirable to amend the same, and to extend and regulate such liability: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

In what cases
compensation to
be made to
injured work-
men.

1. Whenever, after the taking effect in this Act, personal injury is caused to a workman:

- (1) By reason of and defect in the condition of the ways, works, machinery, or plant connected with, or used, in the business of the employer; or
- (2) By reason of the negligence of the employer, or any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (3) By reason of the negligence of the employer, or any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform when such injury resulted from his having so conformed; or
- (4) By reason of the act or omission of the employer, or any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of the employer, or any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, train upon a railway, or any machinery or hauling gear in or about any mine, the workman or, in case the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Exceptions to
the provisions of
the above sec-
tion.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,—

- (1) Under sub-section one of section one of this Act, unless the

defect therein mentioned arose from, or had not been, or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

No. 81, 1886.

- (2) Under sub-section four of section one of this Act unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned: Provided always that in case any such rule or by-law shall have been submitted to the Governor, and approved of by him by notification in the *Gazette*, or in case such rule or by-law shall be made under the provisions of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

Limit of sum recoverable as compensation.

4. No workman, or representative of a workman, shall be entitled to recover compensation for any injury done to him under any other existing law in addition to the compensation to which he may be entitled under this Act.

No compensation recoverable under any other law as well as under this Act.

5. All actions under this Act shall be commenced within six months after the occurrence of the injury for which compensation is sought.

Limit of time within which actions must be brought.

6. For the purposes of this Act, unless the context otherwise requires,—

Definitions.

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

The expression "employer" includes a body of persons corporate or unincorporate.

7. This Act shall take effect only within such mining areas as the Governor may from time to time declare by Proclamation to be published in the *Gazette*, and may be cited as the "Employers' Liability Act, 1886."

Where Act to be in force and short title.

Trade beyond Boundaries.

No. 81.]

[December 23, 1880.

* * * * *

12. And be it further enacted that it shall not be lawful for any person whomsoever to bring within this Colony any person from beyond the said boundaries thereof not legally contracted to him within

Penalty on bringing natives into the Colony against their

No. 22, 1857.
free will, £100.
Agreement
beyond the
boundaries of
the Colony void.

Legal contract
before clerk of
the peace of
persons coming
voluntarily into
the Colony.

in the Colony, against the free will and consent of such person, under a penalty not exceeding one hundred pounds, and if any such person be brought within the Colony upon any contract or agreement of any nature soever entered into beyond the said boundaries such contract or agreement shall be void and of no effect.

13. Provided always, that nothing herein contained shall extend to prevent any native or other person who may have voluntarily come into the Colony with or been brought by any trader or other person from entering into any legal contract or agreement before a Clerk of the Peace or other person before whom the same may be made.

* * * * *

No. 22, 1857.]

AN ACT

[June 29, 1857.]

For more effectually preventing the improper introduction into this Colony of Children belonging to Native Tribes resident in Territories beyond the Land Boundaries thereof.

Preamble.

WHEREAS in some instances, persons visiting the territories lying beyond the land boundaries of this Colony have there procured, and have thence brought into the Colony, to be made servants of, children of tender age, belonging to native tribes resident in the territories aforesaid: And whereas there is reason to believe that if the practice of procuring such children were suffered to grow up, evil consequences may arise therefrom: And whereas the existing laws of the Colony do not sufficiently provide against the introduction of such children, under such circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Native children under sixteen years of age not to be brought within the colonial land boundary without previous sanction of the Governor. Except by the parent of the child; or by persons delivering he same to a resident magistrate within fourteen days. Such child to be under the guardianship of the Governor and may not be apprenticed to the person by whom it is brought in. Children may accompany visitors from beyond the land boundary for a temporary purpose upon a certificate from a competent authority. Any resident magistrate receiving such certificate

1. No person, except as hereinafter excepted, shall, without the previous sanction of the Governor of this Colony for the time being, first had and obtained, bring into this Colony, across the land boundary thereof, any child under the age of sixteen years, belonging to any native tribe or people in Africa, resident beyond the said land boundary. Any person contravening this section of this Act shall, upon conviction, be liable, for and in respect of every child so brought into this Colony, to a fine not exceeding twenty pounds, together with, and in addition to, the sum of one shilling per day for every day during which any such child shall have been harboured or kept by such person within this Colony: Provided that nothing in this section contained shall extend to any parent of any such child as aforesaid, lawfully entering this Colony, and bringing such child into the same, nor to any person whomsoever bringing into the Colony any such child as aforesaid, who shall deliver over such child to any Resident Magistrate of the Colony within the space of fourteen days next after the day upon which such child shall have been brought into the Colony: Provided, however, that every such last-mentioned child shall be placed under the guardianship of the Governor of the Colony, for the time being, as in the fifth section of this Act provided, and that no such child shall be apprenticed to or left with the person by whom such child shall have been brought into the Colony, as in the sixth section of this Act provided: Provided, also, that nothing herein contained shall apply to any inhabitant of any territory beyond the land boundaries of this Colony, visiting this Colony for a temporary purpose, and bringing into this Colony any such child or children as aforesaid,

in case such inhabitant shall produce and exhibit to some Resident Magistrate of this Colony, within one calendar month next after the date of his arrival in this Colony, a certificate in writing, signed by some Magistrate of the territory in which such inhabitant usually resides, certifying that the child or children brought into the Colony by such person is or are lawfully in the service of such person, and that the services of such child or children are required by such person during or upon his journey: Provided, also, that the Resident Magistrate to whom such certificate shall be produced or exhibited shall endorse thereon the date at which the same was so produced to him.

No. 22, 1857.

to note the date of its production.

2. If any child brought by any person into this Colony, in contravention of the last preceding section, shall, without the previous sanction of the Governor of this Colony for the time being, be received, kept, or harboured, whilst under the age of sixteen years, by any other person within this Colony, such last-mentioned person knowing, when so receiving, keeping, or harbouring such child, that such child had been brought into this Colony, without the previous sanction of the said Governor, from beyond the land boundary thereof, then such last-mentioned person shall, upon conviction, be liable to the same penalty as that in the last preceding section mentioned: And any person receiving, keeping, or harbouring, within this Colony, any child brought into this Colony by any such inhabitant of another territory, as in the first section mentioned, shall be liable to the same penalty.

Penalty for keeping or harbouring any child brought into this Colony in contravention of the last preceding section.

3. In every prosecution for a contravention of any of the sections of this Act, the court in which such prosecution shall be pending shall judge from the appearance of the child in question in such prosecution, and also, if needful, from the opinions, given under oath, of persons skilled in ascertaining the age of such children, and from any other evidence which may be adduced on the subject, whether the child referred to in such prosecution was, when brought into this Colony, or received, kept, or harboured therein (as the case may be), under the age of sixteen years or not.

How to judge of the age of such children.

4. When by reason of the death of such child, before the hearing of such criminal case as aforesaid, or other cause, the court in which such case shall be pending shall be unable to inspect the child in question, in such case, then such court shall judge of the age of such child when it was brought into the Colony, or received, kept, or harboured therein (as the case may be), by the knowledge or opinion of persons acquainted with such child.

How to judge of the age of child had died.

5. Every child brought into this Colony in contravention of the first section of this Act, whether the person who brought such child into the Colony be convicted or not, and every child brought into this Colony, by any inhabitant of another territory, as in the first section mentioned, which child shall be received, kept, or harboured by any other person within this Colony, is hereby placed under the guardianship of the Governor of the Colony for the time being, and may, by any person acting under the authority of the said Governor, be apprenticed in like manner as is or shall be, by law provided in regard to destitute children, or the said Governor may, without, or before apprenticing such child, cause such child to be placed at any industrial school within this Colony, and to be there maintained and instructed so long as may be necessary, or as the said Governor shall think fit:

Every child brought into the Colony in contravention of the first section, placed under the guardianship of the Governor, and may be apprenticed or placed at an industrial school. Guardianship not to extend beyond the age of eighteen.

No. 6, 1861.

Provided that the guardianship of the Governor aforesaid shall not extend to, nor shall he cause to be apprenticed, or placed at an industrial school as aforesaid, any person who shall be of the age of eighteen years or upwards.

No such child to be apprenticed or left with the person by whom introduced or harboured in the Colony.

6. No such child as aforesaid shall, in any case, be apprenticed to or left with the person by whom, in contravention of the first section of this Act, such child was brought into this Colony, or any person by whom, in contravention of the second section of this Act, such child was received, kept, or harboured, after being brought into this Colony.

[The remaining sections of this Act relate to children brought into the Colony prior to its promulgation, and have no further applicability].

Prescription (Debts) Act.

No. 6, 1861.]

[August 14, 1861.

Prescription of three years established in certain cases.

5. No suit or action for the fees or for the fees and disbursements of advocates, attorneys, ⁽¹⁾ public notaries, conveyancers, land surveyors, or persons practising any branch of the medical profession, or for the amount of any baker's, or butcher's or tailor's or dressmaker's, or boot ⁽²⁾ and shoemaker's bill or account,—nor any suit or action for the salary or wages of any merchant's clerk or other persons employed in any merchant's or dealer's store, counting-house, or shop,—nor any suit or action for the wages as a servant of any person coming under the definition of the term "servant" given in the Masters and Servants Act No. 15 of 1856, shall (except as hereinafter is excepted) be capable of being brought at any time after the expiration of three years from the time when the cause of action in any such case as aforesaid first accrued or in case such cause or action shall have already accrued, then after the expiration of three years from the time of the taking effect of this Act: Provided that as often as any acknowledgment of or promise in writing to pay any such debt as is in this section mentioned, shall have been made or given at any time before the expiration of such term of three years, then such debt may be sued for at any time within eight years from the date of such acknowledgment or promise, or in case such acknowledgment or promise, shall specify some future time for the payment of the debt, then within eight years from the date at which the said debt became, by or according to the tenor or effect of such acknowledgment or promise due and payable. And provided that nothing in this section contained shall prevent the application to any such debt as is in this section mentioned of any of the provisions of the eighth section of this Act.

How in regard to minors or persons under legal disability.

6. If at the time when any such cause of action as is in the second, third, and fifth sections of this Act mentioned, first accrued, the person to whom the same accrued shall have been a minor, or under coverture, or of unsound mind, or absent from the Colony, then such person, or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action shall have expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may

⁽¹⁾ *Hutchons v. Muller*, 2 Juta 75.

⁽²⁾ *Drummond v. Brown*, 4 Juta 281

be) next after the time at which the person to whom such cause of action first accrued shall have ceased to be under any such disability as aforesaid, or shall have died, whichever of these two events shall have first happened.

* * * * *

Passes to Natives.

No. 22, 1867.]

[August 16, 1867.]

2. From and after the passing of this Act all contracts of service made between employers and natives or native foreigners, in conformity with the provisions of the Act No. 15 of the year 1856, commonly known as the "Masters and Servants Act," shall be good and valid in law; but the existence of any such contract shall not be allowed to protect any native foreigner who may be a party thereto from being prosecuted and punished for entering or being within the Colony without a pass, as hereinafter provided.

* * * * *

Cattle Removal Act.

No. 14, 1870.]

[May 5, 1870.]

2. It shall be the duty of every person desiring the removal of stock ^{Certificate for removal of stock to be obtained.} (1) from any place to any place (2) to procure a certificate (3), signed by any Resident Magistrate, Justice of the Peace, Field-cornet, or landholder, stating the date upon which the same is granted, the name of the owner, and the number and description of the stock to be removed, the name of the place from which the same is being removed, and of the place to which it is being sent; and also the name or names of the driver or drivers thereof.

3. It shall be the duty of any landowner to grant, free of charge, such certificate as aforesaid, written in such language, whether English, Dutch, or native, as such landholder may be able to write intelligibly, to any person who, being in the lawful possession of any stock, desires to remove the same from land occupied by such landholder; and the refusal by the master of any servant or apprentice to grant, in regard to any stock of such servant or apprentice lawfully running or being upon the land of the said master, such a certificate

^{Duty of landholder to grant certificate for removal of stock from his land. How, if landholder refuses.}

(1) " 'Stock' shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that stock under saddle, or pack-saddle, cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police shall not be deemed to be stock within the meaning of this Act," § 13, Act 14, 1870. No stock deemed to be removed merely by reason of their moving from place to place on land in which owner of stock has an interest or ownership, § 6, Act 20, 1889.

(2) Printed as amended by Act 20 of 1889.

(3) This Act to come into force or be suspended in any division, at the request of the Divisional Council of such division, by proclamation in the *Gazette*. Certificates, however, granted in places where Act not in force to be valid in any division where the law has been proclaimed, and when so proclaimed the 3rd and 4th sections to apply to the whole Colony, § 14, Act 14, 1870. A penalty of six months' imprisonment, with or without hard labour, may be imposed upon any one granting a false certificate or fraudulently altering one, § 12, Act 14, 1870.

The term cattle, stock or animals in this Act to include domesticated ostriches, see Act 12, 1885.

No. 18, 1878.

Definition of
punishment for
refusing to
deliver servant's
property.
Penalty for
default of pay-
ment of fine.

15. ⁽¹⁾ As often as the master of any servant or apprentice shall be convicted of the offence of having, either before or after the expiration of the contract of service of apprenticeship, upon demand made and without lawful cause, refused to deliver or permit to be taken away any of such servant's or apprentice's cattle, sheep, goats, or other animals, lawfully remaining or being upon such master's land without reasonable and probable cause for believing that the animals in question were lawfully detained, such master shall be fined any sum not exceeding one pound sterling for every animal so unlawfully detained; provided, however, that the total amount of a fine so payable shall not exceed the sum of five pounds sterling altogether; and in default of payment, shall be imprisoned for any period not exceeding one month; and the Convicting Magistrate shall, besides passing the said sentence, give judgment for the delivery of the said animals, and for costs, as in a civil action before the said Court, which costs, if not paid, shall be levied in the same manner as in the fourteenth section directed; but the fact that the contract of service or apprenticeship of such servant or apprentice has not yet expired shall not be deemed or taken to be of itself reasonable or probable cause for such detention: Provided, however, that nothing herein contained shall impair the effect of any express contract of a lawful kind, by force of which the master shall claim a right to retain any such animals as aforesaid.

Definition of
punishment for
master failing
to supply
articles stipu-
lated for in
contract.

16. As often as the master of any servant or apprentice shall be convicted of the offence of failing, upon demand, to supply or deliver to such servant or apprentice the food, bedding, or other articles stipulated for in any written contract of service or apprenticeship, or of supplying or delivering food, bedding, or other articles not conformable to the said contract, he shall be liable to be fined any sum not exceeding five pounds sterling, and in default of payment to imprisonment for any period not exceeding one month.

Contract may
be cancelled if
the master has
not faithfully
performed his
part thereof.

17. As often as it shall be made to appear to the Magistrate, in any case instituted by any servant or apprentice against his master, that the master has not fairly and faithfully performed his part of the contract of service or apprenticeship, the Magistrate may, should he so think fit, and should the servant or apprentice so desire, order the cancellation of such contract of service or apprenticeship, and the same shall be cancelled accordingly.

Costs for
compelling
parties accused
under this Act,
and their wit-
nesses, to attend
the magistrate's
court to be paid
at the public
charge under
certain excep-
tions. Penal-
ties for bringing
charge without
reasonable
cause.

18. As often as any master shall complain against his servant or apprentice, or any servant or apprentice shall complain against his master, for or on account of any offence against the provisions of this Act, the process of the court of the Resident Magistrate for compelling the attendance of the party accused and of all necessary witnesses shall be instituted at the public charge and without any fees of court: Provided always, that if at the trial the charge shall appear to have been brought without reasonable or probable cause, the party complaining shall be liable to a fine not exceeding five pounds, and also to defray the costs of process and of the witnesses in the case; and in default of payment of such fine and costs, shall be liable to be imprisoned for any period not exceeding one month: Provided, also, that such fine may be imposed upon the

(1). See also Act 14, 1870 (Cattle Removal).

occasion of such trial, and without any fresh action or proceeding for the recovery thereof. No. 7, 1875.

19. In regard to the infliction of spare diet and solitary confinement under this Act, the Resident Magistrate shall observe and conform to such regulations and restrictions as shall have been or shall from time to time be issued by the Governor under the Act No. 20 of 1856. Regulations as to spare diet and solitary confinement.

20. All fines under this Act shall, when recovered, be paid into the Public Treasury. Fines to be paid into Treasury.

21. Sections 3, 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 22, 23, 25, and 26 of the fifth chapter, and so much of any other portion of Act No. 15 of 1856, as is inconsistent with or repugnant to any of the provisions of this Act, shall be and the same are hereby repealed. Certain sections of Act 15 of 1856 repealed.

22. This Act may be cited for all purposes as the "Masters and Servants Law Amendment Act, 1873." Short title.

No. 28, 1874.]

ACT

[July 31, 1874.]

To Amalgamate the Laws relating to Masters, Servants, and Apprentices.

Whereas in several parts of the Act No. 15 of 1856, intituled "An Act to amend the Laws regulating the relative Rights and Duties of Masters, Servants, and Apprentices," reference is made to other parts of the said Act, and whereas many of these references have become inapplicable by reason of the repeal of the said Act by the "Masters and Servants Law Amendment Act, 1873," and it is desirable that the said two Acts should be read together: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

Preamble.

1. The said "Masters and Servants Law Amendment Act, 1873," shall be construed with and as part of the said Act No. 15 of 1856. Act No. 18 of 1873 to be construed with Act No. 15 of 1856.

2. This Act may be cited for all purposes as the "Masters and Servants Law Amalgamation Act, 1874," and the said Act No. 15 of 1856 may for all purposes be cited as the "Masters and Servants Law Act, 1856." Short title.

No. 7, 1875.]

ACT

[June 30, 1875.]

To Amend the Law Relating to Masters, Servants, and Apprentices.

Whereas it is expedient to amend the law relating to Masters, Servants, and Apprentices: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Preamble.

1. (1) If the master of any servant or apprentice alleging matter of complaint against such servant or apprentice for any offence punishable under the "Masters and Servants Law Act, 1856," or the "Masters and Servants Law Amendment Act, 1873," shall make deposition on oath before a Resident Magistrate, or Justice of the Peace, that he believes (stating the grounds of his belief) that in order to secure the appearance of such servant or apprentice before the Resident Magistrate having jurisdiction to try the case, that the apprehension of such servant or apprentice is necessary, it shall be lawful for such Resident Magistrate or Justice of the Peace to issue his Servant or apprentice may be apprehended summarily on deposition of master.—Penalty for malicious depositions.

(1) See Act 30, 1889, § 3, *infra* (master may require servant to appear before Special J.P.)

No. 7, 1875.

warrant for the apprehension of such servant or apprentice without any previous warning or summons: Provided, however, that if the master of any servant or apprentice shall make such deposition maliciously and without reasonable and probable ground for believing the same to be true, such master shall be liable to be fined any sum not exceeding five pounds, and in default of payment thereof to be imprisoned for any period not exceeding one month.

May be apprehended summarily for desertion.

2. If any servant or apprentice is charged under either of the aforesaid Acts with having, without lawful cause, departed from his master's service with intent not to return thereto, it shall be lawful for any Resident Magistrate or Justice of the Peace to issue his warrant for the apprehension of such servant or apprentice without any previous warning or summons.

Punishment for abusive language.

3. ⁽¹⁾ There shall be considered as inserted in the seventh section of the said "Masters and Servants Law Amendment Act, 1873," after the paragraph of the said section numbered eight, the following as a ninth paragraph:

9. If he shall use any abusive or insulting language to his master, or to his master's wife, or to any person placed by his master in authority over him, calculated to provoke a breach of the peace.

Paragraph 5, section 4, Act 18, 1873, repealed.

4. The paragraph numbered five of the fourth section of the said last-mentioned Act is hereby repealed.

Accused competent to give evidence.

5. On the trial of any case in any Court of Resident Magistrate wherein any master, servant, or apprentice is charged with having contravened any of the provisions of the said Masters and Servants Acts, such master, servant, or apprentice, as the case may be, and his or her wife or husband, shall be competent, but not compellable, to give evidence on his or her own behalf, or on the behalf of the complainant in the said case.

Accused not compellable to enter the dock, but may be detained in custody.

6. No master, servant, or apprentice charged with having contravened any of the provisions of the said Masters and Servants Acts, and who is not immediately before the hearing of such charge in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the Court, or shall be otherwise treated as under arrest, during the hearing of such charge: Provided that if, in the opinion of the Magistrate before whom the charge is heard it shall be necessary, in order to secure the attendance of such master, servant, or apprentice, that he should be placed in custody, it shall be lawful for such Magistrate to cause such person to be arrested and detained in custody.

Officer in charge of any public work may prosecute.

7. In case it may be necessary to prosecute or proceed against any person employed on any of the public works of this Colony for contravening any of the provisions of the said Masters and Servants Acts, such prosecution or proceeding may be carried on by and in the name of any of the officers in charge of the work upon which such servant is employed at the time of such contravention.

Short title.

8. This Act may be cited for all purposes as the "Masters and Servants Act, 1875," and shall be construed as one with the Masters and Servants Acts, 1856. and the Act of 1873, amending the same; and the said Acts, the Masters and Servants Law Amalgamation Act, 1874, and this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1875."

(¹) *Vide* Act 30, 1889, *infra*.

No. 30, 1889.]

ACT

[August 13, 1889. No. 30, 1889.]

To amend the Law relating to Masters, Servants, and Apprentices.

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows :

1. Every Special Justice of the Peace shall, within the local limits by law fixed and determined for his jurisdiction, have and be entitled to exercise over and in respect of any person with regard to any offence wherewith such person shall be charged against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, the same jurisdiction, power and authority, as if he were a Resident Magistrate; provided that it shall not be lawful for any such Special Justice of the Peace to punish any offender, subject to the provisions of the said Acts, in any higher or more severe manner than by fine, not exceeding two pounds, or by imprisonment, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding one month: Provided, further, that the provisions of the third to the eleventh sections inclusive, and of the thirteenth section of the Act No. 10 of 1876 ⁽¹⁾ shall *mutatis mutandis* apply to regulate, limit, and define the jurisdiction of and the procedure to be adopted by every Special Justice of the Peace under the authority of this section.

Special J.P.'s jurisdiction extended to all offences against Masters and Servants Acts.

2. Notwithstanding anything to the contrary contained in the seventh section of the Act No. 18 of 1873 ⁽²⁾, as amended by the third section of the Act No. 7 of 1875 ⁽³⁾, the provisions of the second to the sixth sections inclusive and the ninth sections respectively of the said Act No. 18, 1873 (as the last-mentioned section is amended by this Act) shall extend and apply to any man-servant employed as a domestic servant or to perform any bodily labour in manufactures, or as a boatman, porter, groom, stablekeeper, gardener, or other occupation of a like nature.

Offender against section 7 of Act 18, 1873, may be imprisoned without option of fine.

3. Notwithstanding anything to the contrary contained in the ninth section of the Act No. 18 of 1873, or in the first section of the Act No. 7 of 1875, it shall be lawful for the master of any servant or apprentice, if he shall have reasonable and probable cause to suspect such servant or apprentice of having committed any offence against any provision of any of the Acts commonly called the "Masters and Servants Acts, 1856 to 1875," as amended by this Act, to order and require such servant or apprentice forthwith to proceed in his, the said master's company before the nearest Resident Magistrate or Special Justice of the Peace having jurisdiction in the district or place where such master so suspects that such offence has been committed there to answer a charge of having committed such offence; and any servant or apprentice who shall neglect or refuse to obey any such order made by his master, having such reasonable and probable cause of suspicion as aforesaid, shall be liable to be arrested by his master, without warrant, and conveyed in custody before such Resident Magistrate or Special Justice of the Peace as aforesaid, to be by him dealt with

Servant or apprentice reasonably suspected of offence against Masters and Servants Acts must accompany master before Magistrate; if he refuses is liable to arrest.

⁽¹⁾ Vide p. 102, *supra*.

⁽²⁾ Vide *supra*.

⁽³⁾ Vide *supra*.

No. 35, 1886.

according to law; provided that no servant or apprentice shall be bound or obliged to obey such order as aforesaid, unless or until he shall be informed of the nature of the charge which his master intends to prefer against him.

Effect and
short title of
Act.

4. This Act may be cited for all purposes as the "Masters and Servants Act, 1889," and shall be construed as one with the "Masters and Servants Acts, 1856 to 1875," which, with this Act, may be cited collectively as the "Masters and Servants Acts, 1856 to 1889."

No. 35, 1886.]

ACT

[July 6, 1886.]

To Extend and Regulate the Liability of Employers to make Compensation for personal injuries Suffered by Workmen in their Service.

Preamble.

WHEREAS the law relating to the liability of employers to make compensation for injuries suffered by workmen in their service is at present vague and uncertain, and it is desirable to amend the same, and to extend and regulate such liability: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

In what cases
compensation to
be made to
injured work-
men.

1. Whenever, after the taking effect in this Act, personal injury is caused to a workman:

- (1) By reason of and defect in the condition of the ways, works, machinery, or plant connected with, or used, in the business of the employer; or
- (2) By reason of the negligence of the employer, or any person in the service of the employer who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (3) By reason of the negligence of the employer, or any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform when such injury resulted from his having so conformed; or
- (4) By reason of the act or omission of the employer, or any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of the employer, or any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, train upon a railway, or any machinery or hauling gear in or about any mine, the workman or, in case the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Exceptions to
the provisions of
the above sec-
tion.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,—

- (1) Under sub-section one of section one of this Act, unless the

defect therein mentioned arose from, or had not been, or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

No. 81, 1886.

- (2) Under sub-section four of section one of this Act unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned : Provided always that in case any such rule or by-law shall have been submitted to the Governor, and approved of by him by notification in the *Gazette*, or in case such rule or by-law shall be made under the provisions of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law.
- (3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.
3. The amount of compensation under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury. Limit of sum recoverable as compensation.
4. No workman, or representative of a workman, shall be entitled to recover compensation for any injury done to him under any other existing law in addition to the compensation to which he may be entitled under this Act. No compensation recoverable under any other law as well as under this Act.
5. All actions under this Act shall be commenced within six months after the occurrence of the injury for which compensation is sought. Limit of time within which actions must be brought.
6. For the purposes of this Act, unless the context otherwise requires,—
 The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.
 The expression “employer” includes a body of persons corporate or unincorporate.
7. This Act shall take effect only within such mining areas as the Governor may from time to time declare by Proclamation to be published in the *Gazette*, and may be cited as the “Employers’ Liability Act, 1886.” Where Act to be in force and short title.

Trade beyond Boundaries.

No. 81.]

[December 23, 1880.]

12. And be it further enacted that it shall not be lawful for any person whomsoever to bring within this Colony any person from beyond the said boundaries thereof not legally contracted to him within Penalty on bringing natives into the Colony against their

No. 22, 1857.
free will, £100.
Agreement
beyond the
boundaries of
the Colony void.

Legal contract
before clerk of
the peace of
persons coming
voluntarily into
the Colony.

in the Colony, against the free will and consent of such person, under a penalty not exceeding one hundred pounds, and if any such person be brought within the Colony upon any contract or agreement of any nature soever entered into beyond the said boundaries such contract or agreement shall be void and of no effect.

13. Provided always, that nothing herein contained shall extend to prevent any native or other person who may have voluntarily come into the Colony with or been brought by any trader or other person from entering into any legal contract or agreement before a Clerk of the Peace or other person before whom the same may be made.

* * * * *

No. 22, 1857.]

AN ACT

[June 29, 1857.]

For more effectually preventing the improper introduction into this Colony of Children belonging to Native Tribes resident in Territories beyond the Land Boundaries thereof.

Preamble.

WHEREAS in some instances, persons visiting the territories lying beyond the land boundaries of this Colony have there procured, and have thence brought into the Colony, to be made servants of, children of tender age, belonging to native tribes resident in the territories aforesaid: And whereas there is reason to believe that if the practice of procuring such children were suffered to grow up, evil consequences may arise therefrom: And whereas the existing laws of the Colony do not sufficiently provide against the introduction of such children, under such circumstances: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:

Native children under sixteen years of age not to be brought within the colonial land boundary without previous sanction of the Governor. Except by the parent of the child; or by persons delivering he same to a resident magistrate within fourteen days. Such child to be under the guardianship of the Governor and may not be apprenticed to the person by whom it is brought in. Children may accompany visitors from beyond the land boundary for a temporary purpose upon a certificate from a competent authority. Any resident magistrate receiving such certificate

1. No person, except as hereinafter excepted, shall, without the previous sanction of the Governor of this Colony for the time being, first had and obtained, bring into this Colony, across the land boundary thereof, any child under the age of sixteen years, belonging to any native tribe or people in Africa, resident beyond the said land boundary. Any person contravening this section of this Act shall, upon conviction, be liable, for and in respect of every child so brought into this Colony, to a fine not exceeding twenty pounds, together with, and in addition to, the sum of one shilling per day for every day during which any such child shall have been harboured or kept by such person within this Colony: Provided that nothing in this section contained shall extend to any parent of any such child as aforesaid, lawfully entering this Colony, and bringing such child into the same, nor to any person whomsoever bringing into the Colony any such child as aforesaid, who shall deliver over such child to any Resident Magistrate of the Colony within the space of fourteen days next after the day upon which such child shall have been brought into the Colony: Provided, however, that every such last-mentioned child shall be placed under the guardianship of the Governor of the Colony, for the time being, as in the fifth section of this Act provided, and that no such child shall be apprenticed to or left with the person by whom such child shall have been brought into the Colony, as in the sixth section of this Act provided: Provided, also, that nothing herein contained shall apply to any inhabitant of any territory beyond the land boundaries of this Colony, visiting this Colony for a temporary purpose, and bringing into this Colony any such child or children as aforesaid,

in case such inhabitant shall produce and exhibit to some Resident Magistrate of this Colony, within one calendar month next after the date of his arrival in this Colony, a certificate in writing, signed by some Magistrate of the territory in which such inhabitant usually resides, certifying that the child or children brought into the Colony by such person is or are lawfully in the service of such person, and that the services of such child or children are required by such person during or upon his journey: Provided, also, that the Resident Magistrate to whom such certificate shall be produced or exhibited shall endorse thereon the date at which the same was so produced to him.

No. 22, 1887.

to note the date of its production.

2. If any child brought by any person into this Colony, in contravention of the last preceding section, shall, without the previous sanction of the Governor of this Colony for the time being, be received, kept, or harboured, whilst under the age of sixteen years, by any other person within this Colony, such last-mentioned person knowing, when so receiving, keeping, or harbouring such child, that such child had been brought into this Colony, without the previous sanction of the said Governor, from beyond the land boundary thereof, then such last-mentioned person shall, upon conviction, be liable to the same penalty as that in the last preceding section mentioned: And any person receiving, keeping, or harbouring, within this Colony, any child brought into this Colony by any such inhabitant of another territory, as in the first section mentioned, shall be liable to the same penalty.

Penalty for keeping or harbouring any child brought into this Colony in contravention of the last preceding section.

3. In every prosecution for a contravention of any of the sections of this Act, the court in which such prosecution shall be pending shall judge from the appearance of the child in question in such prosecution, and also, if needful, from the opinions, given under oath, of persons skilled in ascertaining the age of such children, and from any other evidence which may be adduced on the subject, whether the child referred to in such prosecution was, when brought into this Colony, or received, kept, or harboured therein (as the case may be), under the age of sixteen years or not.

How to judge of the age of such children.

4. When by reason of the death of such child, before the hearing of such criminal case as aforesaid, or other cause, the court in which such case shall be pending shall be unable to inspect the child in question, in such case, then such court shall judge of the age of such child when it was brought into the Colony, or received, kept, or harboured therein (as the case may be), by the knowledge or opinion of persons acquainted with such child.

How to judge of the age of child had died.

5. Every child brought into this Colony in contravention of the first section of this Act, whether the person who brought such child into the Colony be convicted or not, and every child brought into this Colony, by any inhabitant of another territory, as in the first section mentioned, which child shall be received, kept, or harboured by any other person within this Colony, is hereby placed under the guardianship of the Governor of the Colony for the time being, and may, by any person acting under the authority of the said Governor, be apprenticed in like manner as is or shall be, by law provided in regard to destitute children, or the said Governor may, without, or before apprenticing such child, cause such child to be placed at any industrial school within this Colony, and to be there maintained and instructed so long as may be necessary, or as the said Governor shall think fit:

Every child brought into the Colony in contravention of the first section, placed under the guardianship of the Governor, and may be apprenticed or placed at an industrial school. Guardianship not to extend beyond the age of eighteen.

No. 6, 1861.

Provided that the guardianship of the Governor aforesaid shall not extend to, nor shall he cause to be apprenticed, or placed at an industrial school as aforesaid, any person who shall be of the age of eighteen years or upwards.

No such child to be apprenticed or left with the person by whom introduced or harboured in the Colony.

6. No such child as aforesaid shall, in any case, be apprenticed to or left with the person by whom, in contravention of the first section of this Act, such child was brought into this Colony, or any person by whom, in contravention of the second section of this Act, such child was received, kept, or harboured, after being brought into this Colony.

[The remaining sections of this Act relate to children brought into the Colony prior to its promulgation, and have no further applicability].

Prescription (Debts) Act.

No. 6, 1861.]

[August 14, 1861.]

Prescription of three years established in certain cases.

5. No suit or action for the fees or for the fees and disbursements of advocates, attorneys, ⁽¹⁾ public notaries, conveyancers, land surveyors, or persons practising any branch of the medical profession, or for the amount of any baker's, or butcher's or tailor's or dressmaker's, or boot ⁽²⁾ and shoemaker's bill or account,—nor any suit or action for the salary or wages of any merchant's clerk or other persons employed in any merchant's or dealer's store, counting-house, or shop,—nor any suit or action for the wages as a servant of any person coming under the definition of the term "servant" given in the Masters and Servants Act No. 15 of 1856, shall (except as hereinafter is excepted) be capable of being brought at any time after the expiration of three years from the time when the cause of action in any such case as aforesaid first accrued or in case such cause or action shall have already accrued, then after the expiration of three years from the time of the taking effect of this Act: Provided that as often as any acknowledgment of or promise in writing to pay any such debt as is in this section mentioned, shall have been made or given at any time before the expiration of such term of three years, then such debt may be sued for at any time within eight years from the date of such acknowledgment or promise, or in case such acknowledgment or promise, shall specify some future time for the payment of the debt, then within eight years from the date at which the said debt became, by or according to the tenor or effect of such acknowledgment or promise due and payable. And provided that nothing in this section contained shall prevent the application to any such debt as is in this section mentioned of any of the provisions of the eighth section of this Act.

How in regard to minors or persons under legal disability.

6. If at the time when any such cause of action as is in the second, third, and fifth sections of this Act mentioned, first accrued, the person to whom the same accrued shall have been a minor, or under coverture, or of unsound mind, or absent from the Colony, then such person, or the person claiming through him may, notwithstanding that the period of prescription hereinbefore limited in regard to such cause of action shall have expired, bring a suit or action upon such cause of action at any time within eight years or three years (as the case may

⁽¹⁾ *Hutchons v. Muller*, 2 Juta 75.

⁽²⁾ *Drummond v. Brown*, 4 Juta 281

be) next after the time at which the person to whom such cause of action first accrued shall have ceased to be under any such disability as aforesaid, or shall have died, whichever of these two events shall have first happened.

No. 14, 1870.

* * * * *

Passes to Natives.

No. 22, 1867.]

[August 16, 1867.]

2. From and after the passing of this Act all contracts of service made between employers and natives or native foreigners, in conformity with the provisions of the Act No. 15 of the year 1856, commonly known as the "Masters and Servants Act," shall be good and valid in law; but the existence of any such contract shall not be allowed to protect any native foreigner who may be a party thereto from being prosecuted and punished for entering or being within the Colony without a pass, as hereinafter provided.

Contracts under Masters and Servants Act to hold good. But not to protect person infringing subsequent provisions of Act.

* * * * *

Cattle Removal Act.

No. 14, 1870.]

[May 5, 1870.]

2. It shall be the duty of every person desiring the removal of stock ^{Certificate for removal of stock to be obtained.} (1) from any place to any place (2) to procure a certificate (3), signed by any Resident Magistrate, Justice of the Peace, Field-cornet, or landholder, stating the date upon which the same is granted, the name of the owner, and the number and description of the stock to be removed, the name of the place from which the same is being removed, and of the place to which it is being sent; and also the name or names of the driver or drivers thereof.

3. It shall be the duty of any landowner to grant, free of charge, such certificate as aforesaid, written in such language, whether English, Dutch, or native, as such landholder may be able to write intelligibly, to any person who, being in the lawful possession of any stock, desires to remove the same from land occupied by such landholder; and the refusal by the master of any servant or apprentice to grant, in regard to any stock of such servant or apprentice lawfully running or being upon the land of the said master, such a certificate

Duty of landholder to grant certificate for removal of stock from his land. How, if landholder refuses.

(1) "'Stock' shall mean any horse, gelding, mare, colt, filly, mule, or ass, or any bull, ox, cow, heifer, or calf, or any sheep or goat: Provided that stock under saddle, or pack-saddle, cattle employed in drawing any vehicle, whether inspanned or outspanned, or stock in the possession of the police shall not be deemed to be stock within the meaning of this Act," § 13, Act 14, 1870. No stock deemed to be removed merely by reason of their moving from place to place on land in which owner of stock has an interest or ownership, § 6, Act 20, 1889.

(2) Printed as amended by Act 20 of 1889.

(3) This Act to come into force or be suspended in any division, at the request of the Divisional Council of such division, by proclamation in the *Gazette*. Certificates, however, granted in places where Act not in force to be valid in any division where the law has been proclaimed, and when so proclaimed the 3rd and 4th sections to apply to the whole Colony, § 14, Act 14, 1870. A penalty of six months' imprisonment, with or without hard labour, may be imposed upon any one granting a false certificate or fraudulently altering one, § 12, Act 14, 1870.

The term cattle, stock or animals in this Act to include domesticated ostriches, see Act 12, 1885.

No. 7, 1879.

as is in this Act mentioned, shall be deemed and taken to be, for the purpose of the twenty-first ⁽¹⁾ section of chapter 5 of the Act No. 15, 1856, commonly called the Masters and Servants Act, a refusal by such master to deliver such stock or to permit the same to be taken away; and the provisions of the said twenty-first section shall apply to such case as fully as if the same were herein again set forth.

Who required
to grant cer-
tificates.

4. It shall be the duty of any Magistrate, Justice of the Peace, Field-cornet, or landholder, to whom application is made for such certificate as aforesaid, to grant a certificate, written in such language, whether English, Dutch, or native, as the person applied to may be able to write intelligibly, to the person applying for the same: Provided that the Magistrate, Justice of the Peace, Field-cornet, or landholder to whom application is made shall be satisfied that the stock for the removal of which the certificate is required are the property or in the lawful possession of the person about to remove the same.

Persons driv-
ing stock may
be required to
produce certi-
ficate. On
failure to pro-
duce, &c., stock
may be seized
and impounded.

5. ⁽²⁾ It shall be lawful for any Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or landholder, who shall find any person driving ⁽³⁾ stock, to call upon such person to produce such certificate as aforesaid, and if such person shall fail to produce such certificate, or if the stock being removed shall not correspond in all material respects with the certificate produced, or if the direction in which such person is proceeding with the stock shall not correspond with the direction indicated in such certificate, or if the name of the person driving the stock shall not correspond with that in the certificate, then such Magistrate, Justice of the Peace, Field-cornet, Police Officer, Constable, or landholder, if he shall be able to read such certificate ⁽⁴⁾, may take possession of such stock and cause the same to be conveyed to the nearest pound, there to remain until liberated by order of the Resident Magistrate, or otherwise disposed of as hereinafter provided.

* * * * *

Reformatory Institutions.

No. 7, 1879.]

[January 27, 1882.]

* * * * *

Convicted
child may be
sentenced to
detention in
institution in
addition to im-
prisonment.
Or may be sent
to institution in
lieu of imprison-
ment.

4. ⁽⁵⁾ Whenever any child shall hereafter be convicted of any offence, either upon indictment or on summary conviction punishable by imprisonment, it shall be lawful for the Judge or other competent court by which such child shall be convicted, in addition to the sentence which may then and there be passed as a punishment for the said offence, to direct such child to be sent, at the expiration of such sentence, to any Reformatory Institution established under this Act, to be there detained until he or she reaches the age of sixteen years; or for such shorter period as such Judge or other competent court may think fit; or such Judge or other competent court may, if such Judge or court deem fit, send such child to any Reformatory Institution in lieu and instead of sentencing such child to imprisonment, or may, at the

⁽¹⁾ This section is repealed by § 21, Act 18, 1873, but see § 15 of latter Act.

⁽²⁾ Person driving stock may be arrested without warrant, § 2, Act 20, 1889, and detained pending inquiry for not more than 4 weeks; *vide* § 3 of latter Act.

⁽³⁾ Any person who is riding or leading any stock, whether under saddle or pack saddle, or not, shall be deemed to be driving and to be in custody and possession of such stock. § 2, Act 12 of 1891.

⁽⁴⁾ Printed as amended by Act 20 of 1889.

⁽⁵⁾ See Act 8, 1889, *infra*.

expiration of any sentence, or instead of sentencing such child to imprisonment, order that such child shall be bound to some useful calling or occupation for such period as such Judge or court shall think fit, but not longer, however, than until such child shall attain the age of sixteen years.

No. 8, 1889.

* * * * *

11. At any time before the expiration of the warrant authorising the detention of any inmate in a Reformatory Institution, the Resident Magistrate of the district in which such institution is situate, or of the district in which such child shall then be detained, may bind any such inmate as apprentice to any useful calling or occupation as he may think fit, in the same manner in which destitute children ⁽¹⁾ are now authorised to be bound by the law of this Colony; and such binding shall be as effectual as if such child were of full age and had bound himself: Provided that, if such child should have one or more parents or guardians alive, no such apprenticeship shall take place without the consent of such parents or guardians.

Power to bind inmate as apprentice.

12. The Resident Magistrate may, in any articles of apprenticeship under this Act, provide that such portion of the wages to become due to such apprentice as he may think fit, shall be deposited, at such times and in such manner as he shall determine, in any savings or other bank of this Colony on account of such apprentice, and every such deposit shall be deemed and allowed as a payment to such apprentice, but no portion thereof shall be withdrawn by such apprentice, without the consent in writing of such Resident Magistrate, until the expiration of the apprenticeship.

Provisions of articles of apprenticeship.

20. If any child apprenticed or bound under the provisions of this Act shall desert or abscond from the service of his master, it shall be lawful for any court before whom such apprentice shall be brought, upon proof to the satisfaction of such court, in addition to any punishment which may be inflicted, either to order the child to return to the service of such master, or that such child shall be detained in any Reformatory Institution until such child shall attain the age of sixteen years, or for any shorter period.

Apprentices absconding. Penalties.

21. Any person who shall directly or indirectly counsel or induce, by letter or otherwise, any inmate of any Reformatory Institution to abscond or escape therefrom, or break his apprenticeship and abscond from his master, before such inmate shall have been regularly discharged or before the expiration of such apprenticeship, or who shall aid or abet any such inmate in absconding or escaping, or who knowing such inmate to have absconded or escaped, shall harbour or conceal, or assist in harbouring or concealing, such inmate, or prevent him or her from returning to such Reformatory Institution, or to his master shall, on conviction thereof, forfeit and pay any sum not exceeding twenty pounds, or at the discretion of the court before which such conviction shall be had, be imprisoned for any term not exceeding six months, and with or without hard labour.

Accessories to escape or absconding.

No. 8, 1889.]

ACT

[June 28, 1889.]

To Make further provision for the Apprenticeship of Juvenile Offenders.

Be it enacted by the Governor of the Cape of Good Hope, with the

(1) See Act 15, 1856, § 6, *supra*.

No. 8, 1889.

advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Juvenile offenders may be apprenticed until 21 years of age.

1. Whenever any child under the age of sixteen years shall be convicted of any offence in terms of the fourth section of the Reformatory Institutions Act, 1879, it shall be lawful for the court before which such conviction shall take place to direct that, in lieu of any of the punishments in the said section mentioned, such child shall be apprenticed to some fit and proper person, who shall be willing to instruct and employ such child in some useful calling, trade, or other occupation, including domestic service and service as a farm labourer, until such child shall have attained his twenty-first year or for some shorter period.

Act 15 of 1856 to apply.

2. All and singular the provisions of Act No. 15 of 1856, relating to apprentices, save and except such provisions as are repugnant to or inconsistent with the provisions of this Act, shall, in so far as they are applicable, apply to persons directed to be apprenticed under this Act.

Contract executed before Resident Magistrate.

3. It shall be lawful for any Judge of the Supreme Court, before whom any child shall be convicted as aforesaid, to direct that the contract of apprenticeship shall be executed before a Resident Magistrate to be nominated by such Judge.

Resident Magistrates to be tutors of all minors apprenticed under this Act.

4. The Resident Magistrates of the Colony shall be *ex officio* the tutors of all minors apprenticed under this Act and residing within their respective districts instead of their parents, or tutors, testamentary or dative, and shall, upon proof of the unfitness, inability or unwillingness of any master to retain the custody of any such minor, cancel the contract of apprenticeship and apprentice the minor to some other fit and proper person.

Wages to be deposited in Savings Bank.

5. Whenever any wages shall be payable to any minor apprenticed under this Act such wages shall be deposited in his name in such Post Office Savings Bank as the Magistrate shall direct, and shall not be handed over to such minor until the lawful expiration of his apprenticeship, unless the Magistrate shall for special reasons otherwise direct.

How apprentice may be transferred to another person.

6. No master shall assign or transfer to any other person any minor apprenticed under this Act without the consent of the Resident Magistrate of the district in which such master shall reside, but the consent of the minor or of his parents shall not be necessary.

Punishment of apprentice for deserting from service.

7. Any minor apprenticed under this Act who shall desert from his master's service during his term of apprenticeship shall be liable, upon conviction before any Court of Resident Magistrate, to be imprisoned with or without hard labour for any period not exceeding twelve months, or to receive twenty cuts with a cane, or to both such imprisonment and whipping.

How contract may be cancelled.

8. It shall be lawful for the Supreme Court, Eastern Districts Court, or High Court of Griqualand or any Circuit Court, within their respective jurisdictions, upon the application of any minor apprenticed under this Act, or of any parent or relative within the fourth degree of consanguinity of such minor, to order the cancellation of any such contract of apprenticeship, as aforesaid, and, if need be, to direct a fresh contract to be entered into before such Magistrate as shall be nominated by such Court.

Inquiry as to fitness of master. Notice to be given for applications.

9. Every Resident Magistrate shall, before approving of any contract of apprenticeship, make full inquiry as to the fitness of any master to whom the minor is proposed to be apprenticed, and may by

advertisement in the *Gazette* and some newspaper circulating in his district, give notice in the English and Dutch languages, that applications may be made to him by farmers and other persons wishing to have the convicted offender apprenticed to them. Such notice shall state the name and age of the offender, the offence of which he stands convicted, and the day upon which such applications will be heard before such Magistrate.

No. 27, 1882.

10. It shall be lawful for the Resident Magistrate, pending the publication of such notice or pending such inquiry as in the last preceding section mentioned, whether the offender shall have been tried before him or shall have been sent by some Judge of the Supreme Court to be apprenticed by him, to direct that such offender shall be detained in prison or be admitted on bail until the contract shall be finally executed.

Detention of offender until apprenticed.

11. This Act may be cited for all purposes as the "Juvenile Offenders Apprenticeship Act, 1889."

Short title.

Police.

No 25.]

[Dec 28, 1847.

7. And be it enacted that any Constable belonging to the police force of any district who shall be guilty of any neglect or violation of duty in his office of Constable as the same shall be defined by the rules and regulations to be hereafter framed shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may in the discretion of the Resident Magistrate ⁽¹⁾ of the district who is hereby authorized and empowered to enforce in a summary manner, all penalties to be incurred under this section, as well as under the section next succeeding be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such Constable from any other penalty or punishment which may by any other law be affixed to any illegal act or acts of which he may be guilty,

Penalty for infringing the rules.

Police Offences.

No. 27, 1882.]

[June 29, 1882.

2. In the construction of this Act, the term "Local Authority" shall mean

Interpretation clause.

The Council or Board of Commissioners of any Municipality;

The Board of Management of any community in which the "Villages Management Act, 1881," is in operation;

The Resident Magistrate or Special Justice of the Peace (if any, or as the case may be), residing in any town or village not being a Municipality, or in which the said "Villages Management Act" is not in operation, and when there shall be no such Resident Magistrate or Special Justice of the Peace, any Justice of the Peace residing in or nearest to such town or village.

(1) Or Special J.P., Act 10, 1876, § 2 *supra*.

No. 27, 1882.

To what
localities police
provisions to
apply.

PART I.—POLICE PROVISIONS APPLICABLE TO SPECIAL LOCALITIES.

3. The provisions of this part of this Act shall be in operation :—

- (1) In every town or village which shall hereafter be constituted a municipality.
- (2) In every community which has been, or shall hereafter be, brought under the operation of the "Villages Management Act, 1881."
- (3) In any city, town, village, or other place in which the Governor shall by proclamation declare this part to be in operation, and from a date to be by such proclamation fixed and appointed.

Governor may
define, &c., limits
of towns, vil-
lages, &c.

4. The Governor may from time to time define, vary and alter the limits of any such city, town, village or other place to which the provisions of this part shall be put in operation, and may revoke any such proclamation.

Penalty on
conviction of
following
offences.

5. Any person guilty of any of the following offences, omissions, or neglects shall, on conviction, in respect of each act or offence, be liable to a penalty not exceeding two pounds, or in default of payment, to be imprisoned, with or without hard labour, for a period not exceeding thirty days, unless such penalty be sooner paid :—

Offences
enumerated.

- (1) Washing in, or in any manner defiling or polluting, the water of any public stream or watercourse.
- (2) Indecently exposing the person or appearing in any street or public place without such articles of clothing as decency requires.
- (3) Wantonly or mischievously ringing any public bell, or making any noise or disturbance in the streets, throwing stones or other missiles, using catapults, knocking at doors or ringing any private bells, removing signboards, scales, or other property from the premises of the owner, or mischief of a like nature.
- (4) Wantonly irritating any cattle, horses, or other animals, whether attached to vehicles or not or unnecessarily clapping wagon-whips in any public street or place.
- (5) Making a fire in any street, thoroughfare, or public place, or letting off fireworks without leave of the local authority.
- (6) Riding a horse or driving a vehicle upon any footpath or side-walk.
- (7) Failing or neglecting to keep the sluices or flood-gates of any erf in a proper state of repair, and to allow the water to pass freely through or past the ground of any person for the use of the occupants of the land below.
- (8) Wilfully or by any neglectful act depriving any person of the water to which such person is entitled at the time proper for the use thereof.
- (9) Unlawfully diverting or appropriating the water to which any other person is entitled.
- (10) Throwing any glass, filth, dirt, rubbish, orange peel, or offensive matter upon any public street, lane, or public place, or in any dam, or reservoir, or watercourse, or fountain, or in any other place than such as may have been appointed for that purpose by the local authority.
- (11) Encumbering any public street, footway, or carriage-road,

- or obstructing the free passage along the same by means of any wagon, cart, or other thing whatsoever.
- (12) Wilfully or neglectfully breaking up, injuring or damaging any dam or public watercourse, or sluice-gate, or any public street, footway, carriage-road, or thoroughfare.
 - (13) Cutting down, removing, destroying, or injuring any wood, tree or shrub upon any commonage without special permission from the local authority.
 - (14) Destroying, damaging, or injuring any tree or shrub growing in or along any public street, or in any public place.
 - (15) Furiously driving any vehicle, horses, or cattle, or furiously riding any animal in or through any public street, lane or thoroughfare.
 - (16) Discharging firearms in any street or thoroughfare without leave of the local authority, or unless in the discharge of some duty, or in obedience to some lawful command.
 - (17) Driving or leaving any vehicle drawn by oxen in any public street or thoroughfare without a leader, or leaving any vehicle drawn by horses or mules standing in any street or thoroughfare without a person at the head of the leaders.
 - (18) Swearing or making use of obscene, abusive, insulting, or threatening language, or swearing, shouting, or screaming to the annoyance of the inhabitants in any street, road, or public place.
 - (19) Singing any obscene song or ballad, or writing or drawing any indecent or obscene word, figure, or representation in any public street or place.
 - (20) Burning any straw, shavings or other materials upon any footway, carriage-road, or open or public place.
 - (21) Leaving any inflammable material or matter in any public shed or place, or on any open space near any building, without having first obtained the permission of the local authority.
 - (22) Drawing or trailing any sledge, timber, or other heavy material upon any footway or carriage-road to the injury of such footway or carriage-road.
 - (23) Allowing any night-soil or other offensive matter to be spilt or cast into or upon any road, street, footway, or public place.
 - (24) Allowing the drippings of the eaves of any house to fall upon any public footway.
 - (25) Placing any placard or other document, writing or painting on, or otherwise defacing any house, building, wall, fence, lamp post, or gate, without the consent of the owner or occupier thereof.
 - (26) Neglecting to clean all private yards, ways, passages, or avenues, by which neglect a nuisance by offensive smell or otherwise is caused.
 - (27) Rolling any cask, flying any kite, or playing any game to the annoyance of any person in any public place.
 - (28) Committing any nuisance in any street, or within view of any dwelling house, whereby public decency may be offended.

No. 27, 1882.

- (29) Any common prostitute or night walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers.
- (30) Suffering to be at large any unmuzzled ferocious dog.
- * * * * *

Punishment for drunken, riotous, and indecent conduct.

9. Any person drunk in any street, road, lane, or public place, in or near any shop, store, hotel, or canteen, and any person guilty of any riotous or indecent behaviour in any such place as aforesaid, or in any police office or police station house, shall, upon conviction, be liable to a penalty not exceeding two pounds, and in default of payment, to imprisonment with or without hard labour, and with or without spare diet for any period not exceeding fourteen days, and in case of a second or subsequent conviction, shall be liable to a penalty not exceeding five pounds, or in default of payment to imprisonment ⁽¹⁾ for any period not exceeding thirty days, unless the fine in any case be sooner paid.

For threats, abusive language, &c.

10. Any person who shall use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, ⁽²⁾ or whereby a breach of the peace may be occasioned, in any street, road, public place, or licensed public house, shall, upon conviction, be liable to a penalty not exceeding three pounds, or to imprisonment with or without hard labour, and with or without spare diet, for any term not exceeding thirty days, unless such penalty be sooner paid; and such person may further be required to find sureties to keep the peace for such period, not exceeding three months, as the Court before which such person is tried may deem necessary.

* * * * *

Offences in Part I and Sections 9 and 10 may be prosecuted before Special Justices.

Special J.P.s. jurisdiction limited.

20. The offences mentioned in Part I, and in the ninth and tenth sections of this Act, may be prosecuted before any Special Justice of the Peace within whose jurisdiction any such offence shall have been committed, provided that when so prosecuted, notwithstanding anything in this Act to the contrary, no fine imposed by any such Special Justice shall exceed the sum of two pounds sterling, and no term of imprisonment awarded shall exceed one month, and the said offences, and all other offences created by this Act, and all fines and penalties which may be imposed under the provisions of this Act, may be prosecuted before and imposed by any Resident Magistrate of any district in which the offence was committed.

Appropriation of fines.

21. All moneys arising from fines, penalties, and forfeitures under this Act shall, when recovered, and subject to the proviso hereinafter contained, be appropriated as follows:—

- (1). Under Part I and II, if incurred in any municipality or in any village or community in which the "Villages Management Act, 1881," is in operation, such moneys shall be paid to the local authority.

- (2). Except as aforesaid into the Public Treasury.

Provided that it shall be competent for the court before which any person shall be convicted to award an amount not exceeding one-half of the amount of any such money recovered to any informer or person prosecuting.

⁽¹⁾ With or without hard labour or with or without spare diet. See § 3, Act 13, 1886.

⁽²⁾ *Fischer v. Genricks*, 4 Jut. 31. *R. v. Mostert*, 4 Jut. 500.

22. Any person shall be deemed to have capacity to prosecute as a private prosecutor any person charged with any offence under this Act. No. 23, 1879.
Private prosecution allowed.
How offences to be set forth.

23. In any prosecution for any offence under the provisions of this Act, it shall be sufficient to set forth the offence charged in the words of this Act.

* * * * *

No. 23, 1879.]

AN ACT

[Sept. 11, 1879.]

For the prevention of Vagrancy and Squatting.

WHEREAS it is expedient, as far as possible, to suppress idleness and vagrancy, and whereas serious losses of stock by thefts are experienced by the farmers of this Colony, and there is reason to believe that the same are in a great measure traceable to the facilities afforded to unemployed persons, and persons without sufficient means of support, of residing upon Crown and other lands, and of roaming about without proper control, and it is expedient that such facilities as aforesaid should be restricted: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof as follows:—

Preamble.

1. The eleventh section of the Act No. 22 of 1867, and so much of any other law in force in this Colony as is repugnant to or inconsistent with any of the provisions of this Act, are hereby repealed. Repeal of section 11 of Act 22 of 1867.

2. Any person found wandering abroad and having no visible lawful means, or insufficient lawful means of support, who, being thereunto required by any Resident Magistrate, Justice of the Peace, Field-cornet, police officer, police constable, inspector of native locations, or owner or occupier of land, or who, having been duly summoned for such purpose, or brought before a Resident Magistrate or Special Justice of the Peace in pursuance of this Act, shall not give a good and satisfactory account ⁽¹⁾ of himself, shall be deemed and taken to be an idle and disorderly person, and on conviction thereof, before any Special Justice of the Peace shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days, or upon conviction before any Court of Resident Magistrate shall be liable to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months. Who shall be deemed to be vagrants.

Punishment vagrants.

3. Every person who shall wilfully or knowingly harbour, or suffer or permit to reside on land or premises owned or occupied by him, any idle and disorderly person as aforesaid, shall, on conviction before the Court of Resident Magistrate or Special Justice of the Peace for his district, be liable, in case of conviction before a Court of Resident Magistrate, to a penalty of not exceeding five pounds for every such offence, and in default of payment of such penalty, to be imprisoned, with or without hard labour, for any period not exceeding two months, unless such fine be sooner paid; and in case of conviction before a Special Justice of the Peace as aforesaid, to a penalty of not exceeding twenty shillings, and in default of payment of such penalty to be Penalties for harbouring disorderly persons.

⁽¹⁾ R. v. Boyd, 4 J. 154. R. v. Tamplin and Others, 4 High Court 241. R. v. September, Ford 4.

No. 23, 1879.

Persons loitering and wandering about.

Penalties.

imprisoned, with or without hard labour, for any period not exceeding fourteen days, unless such fine be sooner paid.

4. Every person found without the permission of the owner (the proof of which permission shall lie on such person) ⁽¹⁾ wandering over any farm, in or loitering near any dwelling-house, shop, store, stable, out-house, garden, vineyard, kraal, or other enclosed place, shall be deemed and taken to be an idle and disorderly person; and, upon conviction thereof before any Special Justice of the Peace, shall be liable to a fine not exceeding one pound with the alternative of imprisonment with or without hard labour for a period not exceeding fourteen days unless such fine be sooner paid, or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding fourteen days; or upon conviction before a Court of Resident Magistrate shall be liable to a fine not exceeding two pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding one month, unless such fine be sooner paid, or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding three months in the case of the first conviction, and to a fine not exceeding five pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding three months unless such fine be sooner paid, or to be imprisoned, with or without hard labour, and with or without spare diet, and with or without solitary confinement, or either of them, for any period not exceeding six months, in the case of any subsequent conviction for the same offence.

Apprehension of idle and disorderly persons.

5. Every person hereinbefore declared to be idle and disorderly as aforesaid may be apprehended with or without warrant by any Resident Magistrate, Justice of the Peace, Field-cornet, police officer, or police constable, or by the owner or occupier of the land or premises on which such idle or disorderly person may be, or by anybody acting under the orders of such Resident Magistrate, Justice of the Peace, Field-cornet, or owner or occupier, and, upon apprehension, may be conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law: Provided that no such person shall be apprehended without warrant upon the land or premises of any private person without the consent of such private person, except by such private person or somebody acting by his orders, or by some Resident Magistrate, Justice of the Peace, or the Field-cornet of the ward, or by somebody acting under the orders of such Resident Magistrate, Justice of the Peace, or the Field-cornet.

Not to be apprehended on private property without owner's consent.

Warrant to search for idle and disorderly persons on private property.

6. In case it shall be made to appear to the satisfaction of the Resident Magistrate of the district, or some Justice of the Peace therein, by information in writing upon oath that there is reason to believe that any idle and disorderly person as aforesaid is upon the land or premises of any private person, such Resident Magistrate or Justice of the Peace shall grant a general warrant authorizing some person or persons, named therein for the purpose, to enter upon the land or premises of

⁽¹⁾ Printed as amended by §§ 2 and 3 of Act 27, 1889, *infra*. R. v. Cupido, Buch., 1879, p. 214. R. v. Booy 1, A. C. 276.

No. 23, 1879.

such private person, in order to ascertain whether any idle and disorderly person as aforesaid is upon such land or premises; and in case any idle and disorderly person as aforesaid shall, upon the execution of such warrant, be found upon such land or premises, he may be forthwith apprehended by the person or persons so named in the said warrant as aforesaid, and conveyed before the Resident Magistrate or Special Justice of the Peace of the district in which he was apprehended, or the nearest Resident Magistrate or Special Justice of the Peace, to be dealt with according to law.

7. It shall be lawful for any Resident Magistrate, Justice of the Peace, Field-cornet, police officer, police constable, inspector of native locations, or the owner or occupier of the land or premises whereon or wherein any person as hereafter mentioned may be, to stop any person whom he shall find driving any live-stock, and to interrogate such person; and if he shall not account satisfactorily for the possession of the live-stock so being driven by him, or if there shall be reasonable grounds for suspecting that such live-stock have been criminally procured, then it shall be further lawful for such Resident Magistrate, Justice of the Peace, Field-cornet, police officer, police constable, inspector of native locations, or owner or occupier, to conduct or cause to be conducted, the said live-stock, and the person so driving the same, to the nearest public prison or police station, so that such person so driving the said live-stock may be detained in custody until the then next sitting of the Resident Magistrate or a Special Justice of the Peace of the district in which such prison or police station is situated, who shall inquire into the circumstances, and make such determination in conformity with law as shall to him seem fit and proper.

Persons driving stock may be interrogated, and, not giving satisfactory account, may be arrested and detained in custody.

8. Everyone who shall assault or resist any person authorized as aforesaid to make an arrest, or to enter upon any land or premises while in the execution of such authority, or who shall aid or incite any person so to assault or resist, shall, for every such offence, be liable, upon conviction before any Court of Resident Magistrate, to a penalty of not exceeding ten pounds, and in default of payment thereof, to imprisonment, with or without hard labour, for not exceeding three months, unless such penalty be sooner paid, or to such imprisonment without the option of paying a penalty; or in case of conviction before a Special Justice of the Peace, to a penalty not exceeding twenty shillings, and, in default of payment thereof, to imprisonment, with or without hard labour, for a term not exceeding fourteen days, unless such penalty be sooner paid, or to such imprisonment without the option of paying a penalty.

Penalties for resisting persons authorized to arrest, &c.

9. All squatters trespassing upon waste Crown Land, or upon land occupied by any missionary institution, or upon land set apart as a native location, may be summarily directed to remove therefrom by order in writing, signed by the Resident Magistrate of the district in which such land is situated, such trespassers having been first summoned before the Court of such Resident Magistrate to show cause why they should not remove from such land, and no sufficient cause to the contrary having been proved to the satisfaction of such Court; Provided that no person shall be deemed to be a trespasser within the meaning of this section unless he shall originally have entered upon, and shall be upon, such land, without lawful authority; and

Squatters how to be dealt with.

No. 23, 1879.

any person who may be ordered to remove as aforesaid, who shall disobey such order, shall be liable to be dealt with as an idle and disorderly person as aforesaid, and shall be subject to the penalties provided by the second section of this Act.

Persons insufficiently clothed.

10. Every person found wandering or being in any street or road ordinarily used by the public, or in any place of public resort, or in view thereof respectively, without sufficient clothing for the purposes of decency, shall be deemed and taken to be a disorderly person, and to be guilty of an offence against the true intent and meaning of this Act, and may be arrested without warrant and conveyed before the nearest Resident Magistrate or Special Justice of the Peace to be dealt with according to law, and upon conviction, as in the second section of this Act is provided, shall be liable to the penalties imposed by that section.

Power to make convicted persons work.

11. It shall be lawful for any Resident Magistrate, or Special Justice of the Peace, to adjudge any person convicted under the second and fourth sections of this Act to a term of service on the public works of the Colony, or to employment ⁽¹⁾ under any Divisional Council, or municipality, or private person, other than the said Resident Magistrate or Special Justice by whom such person shall have been convicted, or the person at whose instance such prosecution shall have taken place, who may be willing to employ such person, for any term not exceeding that for which he is liable to imprisonment under this Act on that behalf provided, and at such rate of wages ⁽²⁾ as shall, in the judgment of the Resident Magistrate or Justice of the Peace, be sufficient for his maintenance: Provided always; that if any person so adjudged to service shall escape, or attempt to escape, or otherwise be guilty of any offence under the Masters and Servants Act, he shall be liable to imprisonment, with or without hard labour, for a period not exceeding six months.

Special Justices of the Peace to transmit record of their proceedings under this Act to Registrar of Supreme Court.

12. When and as often as any Special Justice of the Peace shall convict any person of any offence under the provisions of this Act, such Justice of the Peace shall forthwith transmit to the Registrar of the Supreme Court, or in case the said conviction shall have been had within the jurisdiction of the Court of the Eastern Districts, to the Registrar of the said Court of the Eastern Districts, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append, and thereupon all and singular the provisions of the forty-seventh, forty-eighth, and forty-ninth sections of the Act No. 20 of 1856 shall, *mutatis mutandis*, and as far as the same are applicable, extend and apply to such record, the Justice of the Peace being considered as substituted in the said section for the Convicting Resident Magistrate, and all matters required to be done in the said section by the clerk of the Resident Magistrate shall be done by the said Justice of the Peace.

Penalties for wrongfully putting in force the provisions of this Act.

13. Any person who shall, under colour of this Act, wrongfully and maliciously, or without probable cause, arrest, or cause to be arrested, any person, shall be liable to pay a fine not exceeding five pounds sterling, and to pay to the arrested person such amount, not exceeding the sum of five pounds sterling, as and for damages, as the Magistrate before whom such arrested person is

⁽¹⁾ R. v. September. Foord, 4.

⁽²⁾ R. v. Baartman, 1 Juta 239.

brought for trial shall award, and in default of payment of the fine shall be liable to be imprisoned, with or without hard labour, for a period not exceeding three months, unless such fine shall be sooner paid. And if such arrested person is brought for trial before some Special Justice of the Peace, such Justice of the Peace may impose upon any person who may wrongfully and maliciously, or without probable cause, act as aforesaid, the payment of such fine or damages or both as he may think proper: Provided that such fine and damages shall not exceed the sum of twenty shillings respectively, and in default of payment of such fine, the person upon whom such fine has been imposed shall be liable to be imprisoned, with or without hard labour, for any period not exceeding fourteen days, unless such fine shall be sooner paid: Provided further, that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

14. This Act may be cited for all purposes as the "Vagrancy Act, 1879." Short title.

No. 27, 1889.]

ACT

[August 13, 1889.]

To Amend the Law for the Prevention of Vagrancy and Squatting.

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

1. For the purposes of the Act No. 23 of 1879, commonly called the "Vagrancy Act, 1879," and of this Act, the following terms shall bear the following meanings:—

Meaning of terms under Vagrancy Act

"Farm" means any land not situated within the local limits of any municipality or corporate town, or of any area within which the "Villages Management Act, 1881," is or hereafter may be in force;

"Squatter" means any person who, not being a servant or apprentice of the owner of any farm, and not being himself the owner or lawful occupier of such farm, is notwithstanding permitted by such owner or lawful occupier to possess or occupy any hut, house, or other building in or upon such farm;

"Owner" includes

- (a) The registered owner or person entitled to the beneficial ownership of any land;
- (b) The lessee of any Crown land or private land;
- (c) The lawful occupier of any land;
- (d) Any person placed in lawful possession or occupation of any land as the duly authorised representative, agent, or manager, for and on behalf of the registered owner or person entitled to the beneficial ownership of such land, or for and on behalf of any lessee thereof;

but does not include, in respect of the hut, house, or other building possessed or occupied by him,

- (e) Any person who, either as a servant or apprentice of the owner or occupier of any land, or as a squatter, is in possession or occupation of any hut, house, or building upon such land.

2. The words "without lawful excuse (the proof of which excuse shall lie on such person)" shall be and are hereby expunged from the

Section 4 of Act No. 23 of 1879 amended.

No. 20, 1891.

fourth section of the "Vagrancy Act, 1879," and in their place and stead shall be read the following words, to wit, "without the permission of the owner (the proof of which permission shall lie on such person)," and no servant or apprentice of any owner of any land, and no squatter upon the land of any owner shall for the purposes of the said section be deemed to be qualified merely by the possession or occupation of any hut, house, or building on such land to give permission for and on behalf of such owner.

Fines and penalties to be imposed.

3. After the words "shall be liable" where they first occur in the said section shall be inserted the words "to a fine not exceeding one pound, with the alternative of imprisonment with or without hard labour for a period not exceeding fourteen days unless such fine be sooner paid or"; and after the words "shall be liable" where they next occur in the said section the words "to a fine not exceeding two pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding one month, unless such fine be sooner paid or"; and after the words "in the case of the first conviction, and" in the said section the words "to a fine not exceeding five pounds, with the alternative of imprisonment with or without hard labour for a period not exceeding three months unless such fine be sooner paid or."

Addition to definition of "idle and disorderly person" in sec. 4 of Act No. 23 of 1879.

4. Every person shall be deemed to be an idle and disorderly person within the meaning and for all the purposes of the aforesaid Act and of this Act, and shall upon conviction be liable to the penalties provided by the fourth section of the aforesaid Act, who shall be found without the permission of the owner of any farm (the proof of which permission shall lie on such person)

(a) loitering upon any road crossing such farm; or

(b) in or loitering at or near any hut, house, or other building upon any farm, whether such hut, house, or other building shall or shall not be in the possession or occupation of any servant or apprentice of the owner of such farm, or in the possession or occupation of any squatter.

Power of owner of farm without warrant to search for and apprehend idle and disorderly persons in huts, &c., occupied by servant or squatter.

5. Every owner of a farm shall be and is hereby authorised, for the purpose of searching for any idle and disorderly person, to enter without warrant and make search in any hut, house or other building upon such farm, which shall be in the possession or occupation of any servant or apprentice of such owner, or in the possession or occupation of any squatter, and any idle and disorderly person found by such owner in any such hut, house, or other building, may be apprehended without warrant and dealt with in manner provided in the fifth section of the aforesaid Act.

Effect and short title of Act.

6. This Act shall be read and construed as one with the "Vagrancy Act, 1879," and may be cited for all purposes as the "Vagrancy Law Amendment Act, 1889."

No. 20, of 1891.]

ACT

[August 18, 1891.

To Amend Act No. 27 of 1889, commonly known as the "Vagrancy Law Amendment Act."

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

Appointment of Inspector of Native Location.

1. It shall be lawful for the governing body of any corporate town, municipality, or area under the operation of the "Village Management

Act, 1881," to appoint some person to be inspector of any native location situated within the jurisdiction of such governing body, and not under the inspection and control of any lawfully appointed Government officer. No. 29, 1881.

2. The person so appointed shall have the sole right, subject to the lawful directions of the said governing body, to grant permission to any person to settle in such locations. Permission to settle in location.

3. In regard to any such location as aforesaid, the inspector appointed by the governing body shall have all the rights and powers conferred by the Vagrancy Act, 1879, or the Vagrancy Law Amendment Act, 1889, upon the owner of a farm in respect of the farm owned by him, and of any hut or building thereon. Powers of Inspector.

4. This Act may be cited as "The Vagrancy Act Amendment Act, 1891," and shall be read as one with "The Vagrancy Act, 1879," and the "Vagrancy Law Amendment Act, 1889." Short title.

Villages Management.

No. 29, 1881.]

[June 25, 1881.

19. It shall and may be lawful for every board of management to cause all public streets, roads, and places within the limits before-mentioned to be at all times kept in good and sufficient order and repair; and to make all necessary furrows, watercourses, drains, sewers, culverts, and bridges within the said limits; and to construct such works and take such lawful measures, as to them shall appear necessary for the purpose of providing a proper supply of water for the inhabitants residing within such limits; and it shall further be lawful for such board to frame such regulations as may be required in order to prevent the obstruction of any road, street, highway, or other public place within the said limits; or to prevent vehicles from being kept in any such road, street or other public place for an unreasonable time; or to prevent any inconvenience to the public from animals being allowed to wander about within such limits; or to provide for the isolation of persons or animals suffering from any dangerous contagious disease, and for the prevention or suppression of such disease; or to provide for the removal and disposal of all night soil, stable litter, excrement, and other refuse and filth from public and private premises and from all streets, roads and thoroughfares; or to prevent the dangerous and mischievous use of gunpowder or other combustibles within the said limits; or to prevent the making of noises in any street or public place with trumpets or drums, or whips, or by other means; or to prevent or impose restrictions upon the keeping of ferocious or troublesome dogs or other animals within the said limits⁽¹⁾; or to prevent any building or other structure within the said limits from being kept in a condition dangerous to the public or to the personal safety of any individual; or to provide against the pollution of any water which the inhabitants living within the said limits have a right to use; or to provide for the distribution of water among such inhabitants for purposes of irrigation or for domestic use or otherwise; or to provide for the prevention and extinguishing of fires within such limits; or to provide for the granting of licences or permits for the making of bricks, or the digging or getting of clay or

Duties of the Board.

⁽¹⁾ See § 231 of Act 40, 1889, *supra*.

APPENDIX.

FORM OF BOND TO KEEP THE PEACE.

On the — day of —, in the year of our Lord one thousand eight hundred and ninety—

APPEARED before me —, and acknowledged themselves to owe to our Lady the Queen, to wit : the said — the sum of —, and the said — the sum of —, and the said — the sum of —, of good and lawful money of this Colony, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said — shall fail in performing the condition underwritten.

The condition of this recognizance is, that if the said — shall keep the peace, and be of good behaviour towards the Queen and all her people, and especially towards —, then this recognizance shall be null and void, or else to remain in full force.

Taken and acknowledged the day and year above written, before me, the aforesaid —.

WARRANT OF APPREHENSION.

— Esquire, — for the —.

To the Field-cornets, Constables, Police Officers, and other Officers of the Law proper to the execution of Criminal Warrants.

WHEREAS, from information taken upon oath before me, there are reasonable grounds of suspicion against — of —, that — did on the — day of — commit the crime of —.

These are therefore in Her Majesty's name to command you that immediately upon sight hereof you apprehend and bring the said —, or cause — to be apprehended and brought before —, to be examined and to answer to the said information, and to be further dealt with according to law.

Given under my hand at —, this — day of —.

SEARCH WARRANT.

To —.

WHEREAS it appears to me, by the information on oath of — of —, that the following goods, to wit — : have within — days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said —, at — aforesaid ; and that the said — hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of —, of —. These are, therefore, in the name of our Lady the Queen, to authorize and require you, with necessary and proper assistants, to enter, in the daytime, into the said dwelling-house of the said — at — aforesaid, and there diligently to search for the said goods ; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said —, before me, to be disposed of and dealt with according to law.

Given under my hand at —, on the — day of —, 18—.

SUMMONS FOR THE ACCUSED.

To —.

You are hereby required and directed, in Her Majesty's name, on the sight hereof, to summon — that he appear personally before me at — on the — day of —, at — o'clock in the forenoon, there to answer and abide my judgment upon the complaint and information of —, Esquire, that the said — did on or about the —, and such persons (if any) as you shall be required by the said — to summon on his behalf, that they, and each of them, be and appear personally, on the day and at the place aforesaid to testify all they and each of them know concerning the said charge.

Serve on each of them, the said —, a copy of this summons, and return to me, on that day, what you have done hereon.

Given under my hand, at —, this — day of —, 189—.

— Justice of the Peace for the district of —

FORM OF OATH.

I DO SWEAR that the evidence I will now give shall be the truth, the whole truth, and nothing but the truth. So help me God!

AFFIRMATION BY PERSON WHO FROM CONSCIENTIOUS MOTIVES IS UNWILLING TO BE SWORN.

I DO TRULY affirm and declare that—(see §§ 6 and 7, Act 15 of 1891, *supra*.)

FORM OF COMMENCEMENT OF PRELIMINARY EXAMINATION.

BEFORE me⁽¹⁾ — Justice of the Peace for the district of —, at —, in the said district, on this — day of — 18—, in the presence and hearing of the prisoner⁽²⁾ — then in his sound and sober senses, charged with the crime of —.

Appeared⁽³⁾ — who being duly sworn states:—

SUMMONS FOR WITNESSES.

To —

You are hereby required, in Her Majesty's name, to summon — that they, and each of them, appear personally before me, at —, on the — day of — next, at — o'clock in the forenoon, to testify and declare all they, and each of them, know concerning a certain charge preferred against — of —.

Serve on each of them, the said —, a copy of this summons, and return to me, on that day, what you have done hereon.

Given under my hand, at —, this — day of —, 189—,

—, Justice of the Peace for the District of —.

To —, Police Officer.

WHEREAS —, duly summoned to appear before me on the — day of —, 18—, to give evidence in the case of —, charged with the crime of —, has made default therein:—You are hereby required to arrest the said — and to lodge him in the gaol at —, therein to be detained until brought before me or discharged in due course of law.

Given under my hand at —, this — day of —, 18—.

—, Justice of the Peace for the District of —

(¹) Name of J. P. (²) Name of Prisoner in full. (³) Name of Witness in full.

STATEMENT OF PRISONER AT PRELIMINARY EXAMINATION.

At —, on the — day of —, 18—, in the presence of —, Resident Magistrate for the said district, appeared —, — years of age, born at —, by trade or occupation —, residing —, who being asked, what — will answer to the charge made against — of having on the — day of — 18—, at —, committed the crime of —, and being cautioned that — is not obliged to make any statement that may criminate —, and that what — shall say may be used in evidence against —, declares: —

The above declaration was freely and voluntarily made by the said —; he was then in — sound and sober senses, and having been read over and interpreted to —, adhered to the same, and affixed — thereto in the presence of the subscribing witnesses and

Witnesses { — — Resident Magistrate.

WARRANT OF COMMITMENT FOR TRIAL.

District of } *To the Gaoler of the — Gaol.*

THESE are to command you to receive into your gaol the body of —, charged on the oath of — and others, before me, with the crime of —, and to keep the said — in your custody in the said gaol till brought to trial for the said crime, or liberated in due course of law.

Given under my hand at —, this — day of —, 18—. —.

WARRANT OF COMMITMENT FOR FURTHER EXAMINATION.

District of } *To the Gaoler of the — Gaol.*

THESE are to command you to receive into your gaol the body of —, who is hereby recommitted for further examination —, and to keep the said — in your custody until brought before me, on the — day of —, for the purpose aforesaid.

Given under my hand at —, this — day of —. —.

RECOGNIZANCE TO APPEAR AFTER ADJOURNMENT OF CASE.

BE IT REMEMBERED, that on the — day of —, 18—, personally came before me —, and acknowledged themselves to owe to our Lady the Queen, the said — the sum of —, and the said — the sum of — sterling, of good and lawful money of this Colony, to be made of their several goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, and heirs and successors, if the said — shall make default in the condition underwritten.

The condition of this recognizance is, that if the said — shall appear before me on —⁽¹⁾ then this recognizance shall be null and void, or else remain in full force.

Taken and acknowledged the day and year above written before me, the aforesaid —.

(¹) Fill in date and hour accurately.

RECOGNIZANCE UNDER SECT. 55 OF ORDINANCE No. 40.

BE IT REMEMBERED, that on the — day of —, 18—, personally came before me —, and acknowledged themselves to owe to our Lady the Queen, the said — the sum of —, and the said — the sum of — sterling, of good and lawful money of this Colony, to be made of their several goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, her heirs and successors, if the said — shall make default in the condition underwritten.

The condition of this recognizance is, that if the said — shall appear and answer to any indictment that shall be presented against him in any competent Court for the crime — at any time within the space of six months from the date hereof, and accept service of the indictment and summons thereon at ⁽²⁾— then this recognizance shall be null and void, or else remain in full force.

Taken and acknowledged the day and year above written before me aforesaid —.

SEARCH WARRANT.

To

WHEREAS it appears to me, by the information on oath of — of —, that the following goods, to wit, —, have within — days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away out of the house of the said — at — aforesaid, and that the said — had probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of — of —. These are therefore in the name of our Lady the Queen to authorize and require you, with necessary and proper assistants, to enter in the daytime, into the said dwelling-house of the said — at — aforesaid, and there diligently to search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said —, before me to be disposed of and dealt with according to law.

Given under my hand at —, on the — day of —, 18—.

WARRANT OF LIBERATION.

District of } *To the Gaoler of the — Gaol.*
—

THESE are to command you to liberate from your custody the body of — committed thereto by warrant dated —, unless lawfully detained otherwise than by the said warrant.

Given under my hand at —, this — day of —, 18—.

(2) Here specify accurately the office or residence at which service is to be made.

SCHEDULE TO PRELIMINARY EXAMINATION.

Prisoner's Name and Description.	Crime.	Date of Apprehension, if apprehended —if not, state that not in custody.	Whether committed for Trial or for Further Examination, committing Magistrate's Name, Date of Commitment, and prison to which committed.	Whether Bail found or not.	Remarks and instructions of the Attorney-General.

LIST OF DOCUMENTS TRANSMITTED WITH THE PRELIMINARY EXAMINATIONS.

[*Date of transmission of Documents.*]

Clerk of the Peace.

CIRCULAR INSTRUCTIONS ⁽¹⁾

TO

SPECIAL JUSTICES OF THE PEACE UNDER

ACT No. 10 OF 1876.

*Attorney-General's Office,
Cape Town, 1st March, 1877.*

SIR,

My attention having been called to the unsatisfactory manner in which cases are conducted, and records prepared, by Special Justices of the Peace appointed under the Act of last Session, I think it advisable to give a few general instructions on the subject for their guidance.

1. When a complaint is lodged with any Special Justice of the Peace of any offence within his summary jurisdiction, or when any person is brought before him charged with any such offence, he should first ascertain whether there is a competent prosecutor. The Attorney and Solicitor-General and persons appointed by them are of course competent to prosecute, but such prosecutions will rarely take place before Special Justices. The police are competent to prosecute in certain cases, *e.g.*, in cases of contravention of Sect. 18 of Ord. 25 of 1847; of any Municipal regulations; and of any provision of Act 22 of 1876. In all other cases the injured person is a competent prosecutor. (See Sects. 15, 16, and 17, of Ord. No. 40.)

2. Having ascertained that there is a competent prosecutor, the next step is, in the case of a complaint being lodged, to issue a summons calling upon the accused to appear to answer to the charge, and in the case of a person brought before the Special Justice without summons, to frame a charge. Should the immediate arrest of the accused be desired by the prosecutor the Special Justice of the Peace must decide whether the offence is of such a serious nature

⁽¹⁾ Printed, with the omission of such portions as are inapplicable owing to the repeal of the local laws referred to.

(such as theft) as to justify the arrest of the accused instead of having him summoned in the usual manner, and if he thinks it is, then sufficient evidence on oath should be taken to show at least reasonable grounds of suspicion that the accused has committed the offence charged, upon which a warrant of apprehension may be issued.

3. The charges should shortly and distinctly state the act which is alleged to constitute the offence complained of. If what is complained of is a contravention of any Ordinance or Act the very words of the Ordinance or Act should be used. I will give a form applicable to each of the heads mentioned in Sect. 2 of Act 10 of 1876 :—

(A.) *Assault.*—That the said C.D. on the — day of —, and at —, wrongfully and unlawfully assaulted the said A.B. by striking him several blows with his fist on the face and other parts of his body.

(B.) *Theft.*—That upon the — day of —, and at —, the said C.D. did wrongfully and unlawfully steal one hat, the property of A.B. a farmer residing at —.

(C.) *Attempting to commit the crime of Theft.*—That upon the — day of —, and at —, the said C.D. did wrongfully and unlawfully enter the shop there situate of A.B. a shopkeeper there residing, with intent the goods there being to steal [or put his hand into the pocket of A.B. a shopkeeper, there residing, with intent to steal the property of the said A.B. therein contained].

Being an accessory before the fact to the commission of the crime of [stating the offence].—That upon the — day of —, at —, one E.F. did wrongfully and unlawfully [describing the offence committed by E.F.], and that upon the — day of —, and at —, the said C.D. did wrongfully and unlawfully advise, counsel, move and incite the said E.F. the said offence to do and commit.

(D.) *Receiving stolen goods knowing them to have been stolen.*—That whereas, upon —, and at —, one E.F. did wrongfully and unlawfully steal one hat the property of A.B. a shopkeeper there residing; afterwards, to wit, upon —, and at —, the said C.D. did wrongfully and unlawfully receive and have the said hat, then and there well knowing it to have been stolen.

(E.) *Contravening Sect. 18 of Ord. 25 of 1847.*—That the said C.D. is guilty of contravening sect. 18 of Ord. No. 25 of 1847; in that in a certain public thoroughfare at —, called High-street, the said C.D. did wrongfully and unlawfully use threatening, insulting, and abusive words [or behaviour], with intent to provoke a breach of the peace [or from which a breach of the peace might be justly apprehended.] [It would be better to set out the words used.]

(F.) *Contravening Municipal Regulations.*—That the said C.D. is guilty of contravening sect. — of the Municipal Regulations for the municipality of — in that upon — and at — he did wrongfully and unlawfully [stating the particular act.]

(H.) *Contravening Sect. 3 of Act 22 of 1867.*—That the said C.D. is guilty of contravening the 3rd section of the Act No. 22 of 1867,—in that the said C.D. being a native foreigner, to wit, Kafir of Kreli's tribe, was on the — day of —, and at —, wrongfully and unlawfully without a pass as by law provided [or did wrongfully and unlawfully violate the conditions of his pass by (stating the mode in which it was violated).]

4. The accused being brought before the Special Justices of the

Peace for trial either by summons or otherwise, the charge should be read over to him, and he should be asked whether he is guilty or not. If he pleads guilty sufficient evidence should be taken to prove that the offence was actually committed, and to enable the Special Justice of the Peace to form a correct opinion as to what sentence should be awarded. In strict law, perhaps, a person may be sentenced on his plea of guilty without any evidence being taken, but it is not advisable to act upon this. Accused persons may not always understand what is meant by guilty, and the Judges very properly require some evidence besides the mere plea. For instance, if the person is charged with stealing A. B.'s hat, A. B. should at least prove that a hat had been stolen from him. If he can also prove that the hat was found with the prisoner, or any other fact or facts to connect the prisoner with the theft, so much the better. If a person pleads guilty of lying drunk in the street, the constable who picked him up should be examined to prove shortly, the facts. From these instances it will be readily seen what evidence to take in other charges.

If the prisoner pleads not guilty, charge must be inquired into in the manner pointed out by section 4 of the Act 10 of 1876, and Rule 77 of the Magistrate's Court. The witnesses on the part of the complainant are first examined on oath and their evidence taken down in writing, the complainant himself being a competent witness. At the conclusion of the examination of each witness the prisoner should be asked whether he has any questions to put to such witness, and if he has, they should then be put and the replies taken down like the rest of the evidence. The witness may then be re-examined, but only on any new facts which may have arisen on the cross-examination, or to explain any part of his cross-examination. When the complainant's case is closed the prisoner should be asked whether he has any statement to make or witnesses to examine. His statement should be taken down in writing, and his witnesses should be examined in the same manner as those of the prosecutor, the prosecutor being allowed to cross-examine.

Sect. 1 of Act 9 of 1867 provides that on a charge of Theft, if the evidence shows that the accused did not steal the articles, but received them knowing them to have been stolen, he may be convicted of that offence just as if he had actually been charged with it.

Sect. 8 of Act 3 of 1861 provides that if upon the trial of any person it is found that he is not guilty of the offence charged, but only of an attempt to commit the same, such person shall not be entitled to be acquitted, but the Court may convict him of the attempt to commit the said crime just as if he had been charged with the attempt instead of the actual offence.

In taking down evidence it will be sufficient to commence thus :—

"John Smith, sworn, states :—I am a grocer residing in this village." At the conclusion of the case the Special Justice should enter his judgment and under it his sentence if he finds the accused guilty, and should in either case sign the record, which must be forwarded immediately as directed by sect. 9 of Act 10 of 1876.

If the prisoner is to be committed to gaol to undergo his sentence, a warrant in the form given in the 82nd Rule of the Magistrate's Court must accompany him to the gaoler.

5. If at the hearing of any case, at any time before the judgment is given, it shall appear that the offence is, from its nature and magnitude, one which should, in the opinion of the Special Justice, be dealt with by a higher Court, the provisions of the 16th section of the Act 10 of 1876 should be followed, which are so plain that they need no comment.

6. The instructions for taking preparatory examinations are so clearly and fully set forth in Ordinance No. 40 that I need merely observe that the prisoner when put into the dock must not be charged like prisoners under trial. The Special Justice is merely to satisfy himself that the prisoner is in his sound and sober senses (sect. 33), and having done so, the examination of the witnesses should be proceeded with as directed by sect. 31. Every person should be examined who can give any information on the subject (sect. 30). There is no particular form necessary for commencing preparatory examinations, but the following would perhaps be as good a form as any :—

“Appeared in the Preparatory Examination against, and in the presence of —, a —, residing at — (being in his sound and sober senses) charged with the crime of —.

“A. B. who being duly sworn, states :—I am a labourer in the service of C. D., a farmer, residing at Reitfontein, in the district of —.”

Should any evidence have been taken before the prisoner's arrest, or in his absence, it should be read over in the presence of the witnesses and the prisoner, in order that the prisoner may cross-examine (sect. 34.)

At the conclusion of the examination, cross-examination, and re-examination of each witness particular care must be taken to have the evidence read over to the witness, and signed by him, and, if he cannot write, to have his mark, witnessed by two persons. The Special Justice should write at the end of each witness's evidence

“Taken before me at —, this — day of —, 18—.

“A. B.

“Special Justice of the Peace.”

At the conclusion of the examination of the witnesses for the prosecution, the prisoner should be asked whether he has any witnesses, and, if he has, they should also be examined. The prisoner's statement should then be taken in the form provided for that purpose, he being previously cautioned as mentioned in sect. 34 ; and if there are more prisoners than one, the statement of each prisoner should be taken apart from, and out of hearing of, the others ; and the Special Justice must then decide whether he will commit for trial or not (see sects. 35 and 36). Whether the prisoner is committed for trial or not, the papers must be forthwith sent to the nearest Resident Magistrate, who will have the case copied and sent to this office, or if in the Eastern Districts, to that of the Solicitor-General.

I have the honour to be,

Sir,

Your obedient Servant,

S. JACOBS, Attorney-General.

ATTESTATION OF SIGNATURE TO POWER OF ATTORNEY.

"I, A. B., Justice of the Peace for the District of —, do hereby certify that the above signature of C. D. was affixed on this — day of — 18—, in my presence, the said C. D. stating that he was acquainted with the contents of the foregoing power of attorney.

"A. B."

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